

**WHEN RECORDED, RETURN TO:**

**\*\*\*\*DRAFT\*\*\*\***

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTION  
FOR  
LAS RESIDENCIAS**

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# **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

## **FOR**

## **LAS RESIDENCIAS**

This Declaration of Covenants, Conditions, and Restrictions for Las Residencias (the "Declaration") is made this 1<sup>st</sup> day of October, 2021, by Gamma Development, LLC, a New Mexico limited liability company (the "**Declarant**").

### **INTRODUCTION**

A. The Declarant is the Owner of fee title to the real property located in Sandoval County, New Mexico, legally described on Exhibit A attached hereto (the "Property"). The Declarant intends to develop the Property as a planned community to be known as Las Residencias.

B. By executing and recording this Declaration with the County Clerk of Sandoval County, New Mexico, the Declarant intends to impose upon the Property mutually beneficial covenants, conditions, restrictions and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Property. The Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Property and which will be binding upon all future Owners of all or any portion of the Property and any other Person acquiring any right, title or interest in or to all or any portion of the Property.

C. The Declarant desires to provide for the creation of a nonprofit corporation under the laws of the State of New Mexico to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration. The Association also may provide community services benefiting all or a portion of the Property, promote compliance with the Community Documents through education and communications programs and develop and implement programs and services to encourage interaction and a sense of community among Owners and Residents of the Property.

## **ARTICLE 1**

### **DEFINITIONS**

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

**1.1** "**Additional Property**" shall mean the property described on Exhibit "B".

**1.2 “Areas of Association Responsibility”** means: (a) all Common Area; (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or Parcel or a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded document executed by the Declarant or the Association, including but not limited to those certain public access easements located on Las Residencias, as shown on the Plat of the Property; and (c) all land or right-of-way easements which are dedicated to the public, the City or any other governmental body or agency, but which the City or other governmental body or agency requires to be maintained by the Association, or the Association has agreed to maintain with the approval of the governmental body or agency.

**1.3 “Articles”** means the Articles of Incorporation of the Association, as amended from time to time.

**1.4 “Assessable Lot”** means a Lot which is not Exempt Property.

**1.5 “Assessable Parcel”** means a Parcel which is not Exempt Property, if any.

**1.6 “Assessment”** means a Regular Assessment, Special Assessment, Enforcement Assessment or Benefited Property Assessment.

**1.7 “Assessment Lien”** means the lien created and imposed by Article 6.

**1.8 “Assessment Period”** means the period set forth in Section 6.7.

**1.9 “Association”** means Las Residencias Community Association, a New Mexico nonprofit corporation, and its successors and assigns.

**1.10 “Association Expenses”** means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

**1.11 “Association Rules”** means the rules adopted by the Board pursuant to Section 5.8.

**1.12 “Benefited Property Assessment”** means an assessment levied against less than all of the Lots and Parcels pursuant to Section 6.5.

**1.13 “Benefited Property Assessment Area”** means a portion of Las Residencias designated in a Supplemental Declaration as an area containing Limited Common Area or as an area in which the Association will provide Special Services.

**1.14 “Benefited Property Expenses”** means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the maintenance, repair and replacement of Limited Common Areas or to provide Special Services to the Owners, Lessees and Residents in a Benefited Property Assessment Area.

**1.15 “Board”** means the Board of Directors of the Association.

**1.16 “Bylaws”** means the Bylaws of the Association, as amended from time to time.

**1.17 “City”** means the City of Rio Rancho, a New Mexico municipal corporation.

**1.18 “Collection Costs”** means all costs, fees, charges and expenditures including, without limitation, attorneys' fees (whether or not a legal action is filed), court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, demand fees, interest or other amounts payable to the Association pursuant to this Declaration.

**1.19 “Common Area” or “Common Areas”** means the following, and each such term may refer to one or more than one or all of such Common Area, as the context may require: (a) all real property, together with the Improvements situated thereon, which is designated as Common Area in this Declaration (b) all real property, together with all Improvements situated thereon, which is designated as Common Area in a Supplemental Declaration recorded pursuant to Section 2.2, and (c) all other land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

**1.20 “Community Documents”** means, collectively, this Declaration, Supplemental Declarations, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

**1.21 “Construction”** means any (a) de-vegetation, excavation or grading work on a Lot or Parcel, (b) the construction, erection or installation of an Improvement (including, but not limited to, swimming pools and landscaping) on a Lot or Parcel, or (c) any remodeling or reconstruction of an Improvement (including, but not limited to, swimming pools and landscaping) on a Lot or Parcel.

**1.22 “County”** means Sandoval County, New Mexico, a political subdivision of the State of New Mexico.

**1.23 “Declarant”** means Gamma Development, LLC, a New Mexico limited liability company, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument. Any assignee of such Declarant rights shall assume all corresponding obligations of Declarant, and no person shall have any claims against the assignor with respect to such obligations.

**1.24 “Declarant Control Period”** means the period commencing upon the Recording of this Declaration and ending on the earlier of: (a) sixty days after the date that neither the Declarant nor an affiliate owns 75% of Lots with Las Residencias, (b) the latter of the date the Declarant notifies the Association in writing that the Declarant is terminating the Declarant Control Period and the date the Declarant records an instrument voluntarily terminating the Declarant Control Period, or (c) such earlier date as may be required by applicable statute. For clarification, as long as Declarant or an affiliate of Declarant owns either a Lot within Las Residencias, or a Lot,

the Declarant Control Period shall not terminate pursuant to subpart (a) of this Section 1.24, unless required by applicable statute.

**1.25 “Declaration”** means this Declaration of Covenants, Conditions, and Restrictions for Las Residencias, as supplemented or amended from time to time.

**1.26 “Design Guidelines”** means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.1, as amended or supplemented from time to time.

**1.27 “Design Review Committee”** means the Design Review Committee established pursuant to Section 3.1.

**1.28 “Eligible Votes”** means the total votes in the Association, except for any votes allocated to Owners whose voting rights have been suspended by the Association.

**1.29 “Enforcement Assessment”** means an assessment levied pursuant to Section 6.4.

**1.30 “Exempt Property”** means: (a) all Lots and Parcels owned by the Declarant, an Affiliate, or a holder of any Declarant rights; (b) all land and improvements owned by or dedicated to the City, the County, or other public or governmental agency or authority for so long as the public or governmental authority agency or authority is the owner thereof; (c) any unmanned utility substations which provide utility services to any portion of the Property.

**1.31 “First Mortgage”** means any mortgage or deed of trust on a Lot or Parcel which has priority over all other mortgages and deeds of trust on the same Lot or Parcel.

**1.32 “First Mortgagee”** means the holder or beneficiary of any First Mortgage.

**1.33 “Improvement”** means: (a) a Residence or other building; (b) a fence or wall; (c) a swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (d) a road, driveway or parking area; (e) a tree, plant, shrub, grass or other landscaping improvement of any type and kind; (f) a statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind; and (g) any other structure of any type, kind or nature.

**1.34 “Lessee”** means the lessee or tenant under a lease, oral or written, of any Lot or Parcel including an assignee of the lessee’s or tenant’s interest under a lease.

**1.35 “Limited Common Area”** means real property, and the Improvements situated thereon, which are part of the Common Area and which are designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of Las Residencias. Limited Common Areas may include, without limitation, private streets, access gates, guardhouses, drainage or retention areas or landscape medians.

**1.36 “Lot”** means a parcel of land within Las Residencias, whether improved or unimproved, intended for independent ownership and use and designated as a “lot” on a Plat and any Residence, building, structure or other Improvements situated thereon.

**1.37 “Maintenance”** means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

**1.38 “Maintenance Standard”** means the standards for the care and Maintenance of Improvements situated on Lots or Parcels established from time to time by the Board or, in the absence of any standard established by the Board, the standard of care and Maintenance of Improvements situated on Lots or Parcels generally prevailing throughout Las Residencias.

**1.39 “Member”** means a Person who is a member of the Association as provided in Section 5.5.

**1.40 “Modification”** means any addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot or Parcel.

**1.41 “Owner”** means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot or Parcel and a Purchaser, and not the Seller, pursuant to an installment sale contract, commonly referred to as a Real Estate Contract. Owner shall not include Persons having an interest in a Lot or Parcel merely as security for the performance of an obligation or a Lessee. In the case of a Lot or Parcel subject to a Recorded option, the optionor shall be deemed to be the Owner. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots or Parcels subject to a deed of trust pursuant to 1978 NMSA §§ 48-10-1 through 48-10-21, et seq., the trustor shall be deemed to be the Owner. In the case of Lots or Parcels the fee simple title to which is vested in a trustee, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

**1.42 “Owner’s Agent”** means any employee, agent, contractor or subcontractor acting on behalf of or pursuant to a contract with an Owner.

**1.43 “Parcel”** means each separately owned area of real property within Las Residencias other than a Lot, Common Area.

**1.44 “Person”** means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity.

**1.45 “Plat”** means (a) the Plat of Las Residencias, recorded in on \_\_\_\_\_, [], as Document No. []-\_\_\_\_\_, records of Sandoval County, New Mexico, and all amendments, supplements and corrections thereto, and (b) any subdivision plat Recorded against all or any part of the Property, or property encumbered with this Declaration pursuant to a Supplemental Declaration. The Plat referred to in subpart (a) of this Section is sometimes referred to as the **“Initial Plat.”**

**1.46 “Project”** means the real property described on Exhibit A attached to this Declaration together with all Improvements located thereon, and all real property together with all

Improvements situated thereon that is annexed and subjected to this Declaration pursuant to Section 2.2 of this Declaration.

**1.47 “Purchaser”** means any Person (other than the Declarant) who becomes the Owner of a Lot or Parcel, except for: (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot or Parcel, is assigned any or all of the rights of the Declarant under this Declaration.

**1.48 “Recording”** means placing an instrument of public record in the office of the County Clerk of Sandoval County, New Mexico, and **“Recorded”** means having been so placed of public record.

**1.49 “Regular Assessment”** means the Regular Assessments levied by the Association pursuant to Section 6.2.

**1.50 “Residence”** means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**1.51 “Resident”** means each natural person occupying or residing in any Residence.

**1.52 “Special Assessment”** means any assessment levied and assessed pursuant to Section 6.3.

**1.53 “Special Services”** means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of Las Residencias. Special Services may include, without limitation, guard services (including the maintenance of guard gates or guardhouses) and landscape maintenance services for landscaping situated on Lots and/or Parcels.

**1.54 “Supplemental Declaration”** means a Supplemental Declaration executed by the Declarant and Recorded pursuant to Section 2.2.

**1.55 “Las Residencias”** means the real property described on Exhibit A attached to this Declaration with all Improvements located thereon.

**1.56 “Visible From Neighboring Property”** means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six feet tall, standing at ground level on any part of any Lot, Parcel, Common Area, Neighborhood Common Area or any public street within or adjacent to Las Residencias; except where the Improvement is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

## ARTICLE 2

### **PROPERTY AND PERSONS BOUND BY DECLARATION; ESTABLISHMENT OF GENERAL PLAN OF DEVELOPMENT**

## **2.1 Purpose and Binding Effect.**

Declarant intends by this Declaration to impose upon the Property covenants, conditions, restrictions and easements to create a general plan of development for the Property and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Property. The Declarant declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Property. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Property and shall be binding upon and inure to the benefit of the Declarant and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Property, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association, the Owners, and the Declarant.

## **2.2 Supplemental Declarations.**

The Declarant shall have the right to record one or more Supplemental Declarations for various parts of Las Residencias. If the property covered by the Supplemental Declaration is not owned by the Declarant, then the Supplemental Declaration must also be signed by the owners of fee title to the property covered by the Supplemental Declaration. A Supplemental Declaration may designate Common Areas or other Areas of Association Responsibility and impose such covenants, conditions, restrictions and easements as the Declarant deems appropriate for the property to be covered by the Supplemental Declaration. A Supplemental Declaration may also designate Limited Common Areas, and Special Services. If a Supplemental Declaration designates any Limited Common Areas or Special Services, the Supplemental Declaration shall also designate the Benefited Property Assessment Areas containing the Lots and Parcels which will be subject to a Benefited Property Assessment. Except as provided below, in this Section 2.2, a Supplemental Declaration may only be amended by a written instrument executed by: (a) the Owners representing more than sixty-seven percent (67%) of the votes in the Association held by the Owners of all of the Lots or Parcels subject to the Supplemental Declaration; (b) the Association; and (c) the Declarant so long as the Declarant (including an assignee of any or all of the Declarant's under this Declaration as addressed in the definition of "Declarant" in Article 1 owns any Lot or Parcel. If an amendment to a Supplemental Declaration adds, deletes or changes any Limited Common Areas or Special Services or any Benefited Property Assessment Area, then such amendment must also be approved by at least two-thirds (2/3) of the votes held by Owners of Lots and Parcels within such Benefited Property Assessment Area or by such greater percentage of votes as may be required by the Supplemental Declaration, and, if the proposed amendment will convert any Limited Common Areas to Common Areas maintained by the Association without a Benefited Property Assessment, by the Members holding more than fifty-percent (50%) of the votes allocated to Lots and Parcels owned by the Members and located outside of the area formerly subject to the Benefited Property Assessment. Any amendment to a Supplemental Declaration approved in accordance with the foregoing shall be executed by the Association and shall be effective only upon the Recording of the Supplemental Declaration. To any extent that an assignment and assumption of Declarant rights constitutes an amendment of this Declaration or a Supplemental Declaration, the Declarant parties to that assignment and assumption may amend it

by Recorded, written agreement signed by them without the consent of other Owners or of the Association. The Association shall not accept as Common Area any (a) private streets or alleys, (b) parking areas, (c) clubhouses or (d) tennis courts unless such Common Areas are designated as Limited Common Areas for which the benefited Lots or Parcels shall be subject to a Benefited Property Assessment.

### **2.3 Disclaimer of Representations and Implied Covenants.**

The Declarant makes no representation or warranty as to how Las Residencias will be developed. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to Las Residencias. Nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

### **2.4 Further Subdivision, Property Restrictions, Rezoning and Timeshares.**

Without the prior written approval of the Declarant during the Declarant Control Period and the prior written approval of the Association, no Owner other than the Declarant or an affiliate of Declarant shall do any of the following: (a) further subdivide a Lot or Parcel or separate a Lot or Parcel into smaller lots or parcels; (b) convey or transfer less than all of a Lot or Parcel; (c) replat a Lot or Parcel or combine a Lot or Parcel with other Lots or Parcels; (d) record covenants, conditions, restrictions or easements against any Lot or Parcel; (e) file any application for zoning, rezoning, variances or use permits pertaining to any Lot or Parcel with the City; or (f) subject or use a Lot or Parcel for any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

### **2.5 Obligation to Construct Common Area Improvements.**

The Declarant or Owner of real property identified or designated on a Plat or any Supplemental Declaration as real property which is to be Common Area or to be an Area of Association Responsibility shall be responsible for installing and constructing improvements on such real property in accordance with plans and specifications for such real property approved by the City. The construction and installation of improvements on any such real property shall be constructed in a good and workmanlike manner and in accordance with applicable industry standards. The construction and installation of improvements on any such real property shall be completed within such time period as may be specified by the Declarant during the Declarant Control Period or by the Design Review Committee.

### **2.6 Withdrawal of Property.**

During the Declarant Control Period, the Declarant shall have the unilateral right to withdraw from this Declaration, without the consent or approval of the Association or any other Owner or Person, any real property that the Declarant determines will be conveyed to a governmental body for use as a public purpose. The withdrawal of all or any portion of Las Residencias from this Declaration shall be effected by the Declarant Recording a Declaration of

Withdrawal setting forth the legal description of the property being withdrawn. If the Declarant does not own the property to be withdrawn, then the Declaration of Withdrawal must be signed by the owners of fee title to the property to be withdrawn. Upon the withdrawal of any property from Las Residencias pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in the Community Documents.

### **2.7 Views Not Guaranteed.**

Although certain Lots in the Project at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. No representation or warranty whatsoever, express or implied, is made by Declarant or the Association concerning the view that any Lot will have whether as of the date this Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot may be impaired or obstructed by further construction within or outside the Project, including, without limitation, by construction of Improvements (including, without limitation, landscaping) by Declarant, construction by third parties (including, without limitation, other Owners and Residents) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

## **ARTICLE 3**

### **ARCHITECTURAL CONTROL**

#### **3.1 Design Review Committee.**

During the Declarant Control Period, the Declarant shall have the sole right to determine the number of members on the Design Review Committee and to appoint and remove the members of the Design Review Committee. Thereafter, the Board shall determine the number of members on the Design Review Committee, and the members of the Design Review Committee shall be appointed and may be removed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require, for the duration of the Declarant Control Period, that the Declarant or the Declarant's designee shall have the right to approve, before they become effective, the specific actions of the Design Review Committee addressed in the Declaration that require the Declarant's approval during the Declarant Control Period, and the specific actions of the Design Review Committee described in any recorded instrument executed by the Declarant.

The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. The Design Guidelines may include, without limitation, provisions regarding: (a) the size and height of Residences, buildings or other improvements; (b) architectural style or design; (c) placement of Residences and other buildings including establishing building envelopes; (d) landscaping design, content and conformance with the character of Las Residencias and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved Construction or Modification; and (i) rules and regulations governing construction activities; and (j) standards and procedures for submissions and approval of plans.

During the period that the Declarant has the right to appoint and remove the members of the Design Review Committee, any repeal or amendment of the Design Guidelines must be approved by the Declarant. After the Declarant's right to appoint and remove the members of the Design Review Committee has terminated, any repeal or amendment of the Design Guidelines must be approved by the Board. Any approval by the Design Review Committee of standard plans for use by the Declarant shall apply to all Lots on which the Declarant desires to use such plans and shall not be subject to subsequent rescission or modification without the Declarant's consent.

### **3.2 Approval Required.**

No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, that the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, the Construction or Modification of any Improvements or any other work made by, or on behalf of the Declarant.

The Design Review Committee may exempt certain Construction or Modification from the application and approval requirements of this Article 3, provided such Construction or Modification is undertaken in strict compliance with the requirements of such exemption. Any Owner may remodel, paint or redecorate the interior of a Residence or other building without approval so long as such activity does not affect the exterior appearance of the Residence or building.

Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. All assessments that have been assessed against the Owner's lot must be paid current prior to submitting to the Design Review Committee. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the complete application, together with any fee payable pursuant to Section 3.7 and all supporting information, plans and specifications requested by the Design Review Committee, have been submitted to the Design Review Committee, the Owner submitting such plans may deliver to the Design Review Committee a demand that the Design Review Committee act on the plans submitted by the Owner. If the Design Review Committee does not approve the plans within thirty (30) days after receipt of the demand from the Owner, then the plans shall be deemed disapproved. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any Construction or Modification subsequently submitted for approval.

The Design Review Committee may delegate its authority to approve or disapprove any proposed Construction or Modification to the Association's managing agent upon such conditions and subject to such limitations as the Design Review Committee may determine to be appropriate.

The Design Review Committee may establish one or more subcommittees consisting of one or more members of the Design Review Committee and may delegate to such subcommittee or subcommittees the authority and power of the Design Review Committee to approve or disapprove any Construction or Modification within Las Residencias or within a specified portion of Las Residencias. The Design Review Committee may also delegate to a Neighborhood Association the authority to review and approve or disapprove any Construction or Modification within the property subject to the jurisdiction of the Neighborhood Association. Any delegation by the Design Review Committee of its authority or power under this Article 3 shall be subject to such conditions and limitations as may be imposed by the Design Review Committee and may be revoked at any time by the Design Review Committee by written notice to the Person or Neighborhood Association to whom the power or authority had been delegated.

### **3.3 Review of Plans.**

In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (a) the harmony of the proposed Improvements with existing Improvements in Las Residencias or with Improvements previously approved by the Design Review Committee but not yet constructed; (b) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (c) the exterior design, finish materials and color of the proposed Improvements; and (d) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, in its reasonable discretion, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration, subject to an appeal of the decision to the Board as provided in this Section.

The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation. The Owner is responsible for obtaining, at the Owner's sole cost, all approvals, permits licenses and inspections required by any federal, state or local law, statute, ordinance, rule or regulation.

All Improvements constructed on Lots or Parcels shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Lot or Parcel.

After the Declarant's right to appoint and remove the members of the Design Review Committee has terminated, any Owner aggrieved by a decision of the Design Review Committee may appeal the Design Review Committee's decision to the Board. Any appeal to the Board shall be made in accordance with such procedures as may be adopted by the Board.

### **3.4 Variances.**

The Design Review Committee may grant variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, economic or procedural hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, in its reasonable discretion, that the objective of the particular requirement can still be achieved. No variance approved by the Design Review Committee shall be effective until the variance is set forth in a written document signed by or on behalf of the Design Review Committee. No variance shall amend or modify any provision of this Declaration or prevent the Design Review Committee from denying a variance in other circumstances. For purpose of this Section, the inability to obtain approval of any governmental agency, the issuance of any license or permit, or comply with the terms of any financing shall not constitute an economic or procedural hardship.

### **3.5 Construction of Improvements.**

Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and within such time as may be prescribed by the Design Review Committee. After commencement of the approved construction or modification, the Owner shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

### **3.6 No Changes Without Approval.**

Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee.

### **3.7 Review Fee.**

The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable by the Owner at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in processing the application and in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Design Review Committee may retain architects, engineers or other persons as deemed necessary to review applications.

### **3.8 No Warranty; Limitation of Liability.**

The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation. The Design Review Committee shall not be liable or bear any responsibility for (a) ensuring the structural integrity, quality, soundness or workmanship of any Construction or Modification approved by the Design Review Committee, (b) ensuring compliance with building codes or other governmental requirements or (c) ensuring that all Improvements are of comparable quality, value, size or similar design.

### **3.9 Improvements to Areas of Association Responsibility.**

If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement.

any of Owner's Agents causing the need for cleanup or causing the damage or destruction.

## ARTICLE 4

### **EASEMENTS AND DEVELOPMENT RIGHTS**

#### **4.1 Easements for Use of Common Area.**

Every Owner, Lessee and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot or Parcel, subject to:

(a) The right of the Association, subject to Section 5.9, to dedicate, convey, transfer, lease or encumber the Common Area; provided, however, that if access to a Lot or Parcel is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner, Lessees and Residents of the Lot or Parcel and their guests and invitees.

(b) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area, subject to the provisions of Section 4.2 hereof, the types of uses for the Common Area, and restricting or prohibiting access to such portions of the Common Area (such as landscaped areas) not intended for use by the Owners, Lessees or Residents.

(c) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot or Parcel) if such Owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

(d) The rights and easements reserved by or granted to the Declarant by the Community Documents.

(e) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or Resident for the exclusive use of such Owner or Residents and their guests and invitees.

(f) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area.

(g) The right of the Association to permit the use of any recreational facility or amenity situated on the Common Area by Persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board.

(h) The rights and easements, if any, reserved or granted to the Declarant, a builder or any other Person in the deed conveying the Common Area to the Association.

The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot or Parcel to which such right is appurtenant.

Notwithstanding any other provision of this Section to the contrary, the right to use and enjoy any Limited Common Area shall only extend to the Owners and Residents designated in the Supplemental Declaration establishing such Limited Common Area as the Owners and Residents solely or permanently benefited by the Limited Common Area.

#### **4.2 Rights and Easements to Facilitate Development.**

The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Property, not owned by others, for all purposes reasonably related to the development and completion of Improvements in Las Residencias, including without limitation: (a) easements for the temporary storage of supplies of building materials and equipment necessary to complete Improvements; and (b) easements for the construction, installation and Maintenance of such Improvements as the Declarant determines, in its reasonable discretion, to be necessary or desirable.

The Declarant hereby reserves to itself, its successors and assigns, and its Affiliates, the right to: (a) use any Lots or Parcels owned or leased by the Declarant, any other Lot or Parcel with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office or model home parking areas; and (b) install and maintain on the Common Area, any Lot or Parcel owned or leased by the Declarant or any other Lot or Parcel with the consent of the Owner thereof, such marketing or promotional flags and flag poles and such marketing, promotional, identification, direction or other signs which the Declarant deems necessary for the development, sale or lease of Lots and Parcels in Las Residencias. The Declarant shall have the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of Las Residencias. The Declarant may make any dedications and grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights granted or reserved to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all of Ascension by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

In the event of any conflict or inconsistency between this Section and any other provision of the Community Documents, this Section shall prevail.

#### **4.3 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors and employees, the Design Review Committee and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots and Parcels (excluding the interior of any Residence) for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot or Parcel have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or Parcel or in any Common Area threatening another Lot or Parcel, the Common Area or any Neighborhood Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on Areas of Association Responsibility situated within the boundaries of the Lots or Parcels; or (e) correcting any condition which violates the Community Documents.

#### **4.4 Easements for Encroachments.**

If any Improvements on any Lot or Parcel or portion of the Common Area or Neighborhood Common Area now or hereafter encroach on any other property by reason of: (a) the original construction thereof; (b) deviations within normal construction tolerances in the Maintenance of any Improvement; or (c) the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's gross negligence or willful misconduct.

### **ARTICLE 5**

#### **THE ASSOCIATION**

##### **5.1 Formation and Powers of the Association.**

The Association shall be a New Mexico nonprofit corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under New

Mexico law and all powers necessary or desirable: (a) to perform the Association's duties and obligations under the Community Documents or imposed by law; (b) to exercise the rights and powers of the Association set forth in the Community Documents; and (c) to foster and promote the common good and general welfare of Las Residencias, the Owners, Residents and Lessees, and the surrounding community. The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege. The Association shall be managed by a Board of Directors. Except as otherwise provided in this Section below, the Declarant shall have the right to appoint all of the Board members until the termination of the Declarant Control Period. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots, to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by the Owners; not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots, to Owners other than the Declarant, no less than thirty-three percent (33%) of the members of the Board shall be elected by the Owners; and not later than the termination of the Declarant Control Period, the Owners shall elect a Board of at least three (3) members, at least a majority of whom shall be Owners. The Declarant shall have the right to remove the members of the Board appointed by the Declarant. The members of the Board that are elected by the Owners shall be elected in accordance with the Articles and Bylaws. The Board shall elect the officers. The Board members and officers shall take office upon election. The Association shall not be dissolved unless another entity has agreed to assume the operation and maintenance responsibilities of the Association under the Community Documents.

The Association may create profit or nonprofit subsidiaries which may be tax-exempt organizations and delegate to such subsidiaries portions of the powers and authority of the Association under the Community Documents. The Association may engage in activities to benefit persons other than Owners, Lessees and Residents and may operate, manage and maintain property not owned by the Association (including, without limitation, property dedicated to public use) if the Association determines in its discretion that such action confers some benefit upon Las Residencias.

## **5.2 Authorized Community Activities, Services and Programs.**

The Association may organize, fund and administer community-building activities, services and programs as the Association deems necessary, desirable or appropriate. Examples of such activities, services and programs include, but are not limited to, the following:

- (a) Operation and management of the Areas of Association Responsibility;
- (b) Primary and adult education programs;
- (c) Recreation and social programs;
- (d) Activities designed to promote compliance with the Community Documents through education and communication;

- (e) Public relations activities on behalf of Las Residencias;
- (f) Cultural, arts, environmental and wellness programs;
- (g) Community service activities for the benefit of Owners, Lessees or Residents of Las Residencias and the surrounding community;
- (h) Community internet and intranet sites;
- (i) Charter clubs and other volunteer organizations and activities;
- (j) Other services, activities and programs which enhance the sense of community in Las Residencias.

Nothing in this Section shall be construed as a representation by the Declarant or the Association as to what, if any, activities, services and programs will be provided by the Association. In addition, the Association may modify or cancel existing activities, services and programs in its discretion. Nonuse of any activities, services or programs offered by the Association shall not exempt any Owner from the obligation to pay Assessments.

### **5.3 Relationship with Other Entities.**

The Association may enter into cooperative agreements and expend funds for facilities, services and activities which benefit Las Residencias and the surrounding community. The Association may provide, or provide for, such services and facilities for all of the Owners, Lessees and Residents and their Lots and Parcels, and the Association is authorized to enter into and terminate contracts or agreements with other entities, including the Declarant or its affiliate, to provide such services and facilities. The Association may charge use or service fees for any such services and facilities provided, but may also include all or a portion of the cost thereof in the Association's budget as an Association Expense and assess it as part of the Regular Assessment if the services and facilities are provided to all Lots and Parcels or may also include all or a portion of the cost thereof in a Benefited Property Assessment if the services and facilities are provided to less than all of the Lots and Parcels. In any contracts or agreements with third parties for the provision of services within Las Residencias, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association for the collection of such bills.

### **5.4 Identity of Members.**

The Members of the Association shall be Owners of the Lots and Parcels. All Owners of Lots and Parcels shall be mandatory Members of the Association. An Owner of a Lot or Parcel shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his Membership in the Association shall automatically cease.

### **5.5 Allocation of Memberships.**

Each Lot and Parcel, except for a Parcel owned by the Association, shall be allocated Memberships in the Association. Each Owner shall have the number of Memberships allocated to the Lots and Parcels owned by such Owner, excluding Parcels owned by the Association. Each Lot and Parcel (except for a Parcel owned by the Association) is allocated Memberships in the Association as follows:

- (a) Each Lot is allocated one (1) Membership.
- (b) Each such Parcel is allocated one (1) Membership for each Lot that may be created by the subdivision of the Parcel as shown on the Plat of the Property. If a subdivision plat or other instrument creating Lots is Recorded covering all or part of the area within the Parcel, the Parcel shall be reduced in size by the area so platted and the number of Memberships allocated to such Parcel shall be reduced by a number equal to the number of Lots in the Recorded subdivision plat. All Memberships attributable to the Parcel shall cease when the land area ceases to be a Parcel because all of the area in the Parcel has been platted or otherwise dedicated to the public and no unplatted area remains within the Parcel.

### **5.6 Class of Members and Voting Rights.**

The Association shall have one class of Membership. Each Owner, including, as to Lots and Parcels owned by the Declarant, the Declarant, shall be a Member of the Association. Each Member shall be entitled to one (1) vote for each Membership held by such Member, as addressed in Section 5.5. No more than one (1) vote may be cast for any Lot on each matter properly coming before the Members for vote. No more than the number of Memberships allocated to a particular Parcel, as addressed in Section 5.5, may be cast for such Parcel on each matter properly coming before the Members for vote.

### **5.7 The Association Rules.**

The Board may adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; and (b) minimum standards for the Maintenance of Lots and Parcels. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

### **5.8 Personal Liability.**

No director, officer, employee or agent of the Association or the Design Review Committee or of any committee of the Association or the Design Review Committee, and no other Person

acting on behalf of the Association or the Design Review Committee shall be personally liable to any Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such Person's duties and responsibilities under the Community Documents provided such Person acted in good faith.

#### **5.9 Conveyance, Lease or Encumbrance of Common Area.**

The Association may dedicate parts of the Common Area to the City or any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of Las Residencias. The Association may convey portions of the Common Area for the purpose of adjusting the boundary lines between the Common Area, Limited Common Area and adjoining Lots or Parcels or dedicated rights-of-way. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of Las Residencias. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as the Board determines to be necessary or desirable; provided, however, that any lease entered in to after the termination of the Declarant Control Period must be approved by Owners entitled to cast more than fifty percent (50%) of the Eligible Votes. Except as otherwise expressly provided in this Declaration, the Common Area shall not be mortgaged or conveyed without the prior written consent or affirmative vote of Members holding at least two-thirds (2/3) of the Eligible Votes and by the Declarant so long as the Declarant owns any Lot or Parcel.

#### **5.10 Voluntary Termination.**

At any time before the termination of the Declarant Control Period, the Declarant may voluntarily terminate its right to appoint and remove officers and members of the Board, in which event, for the duration of the Declarant Control Period, the Declarant or the Declarant's designee shall have the right to approve, before they become effective, the specific actions of the Association or the Board addressed in the Declaration that require the Declarant's approval during the Declarant Control Period, and the specific actions of the Association or the Board described in any recorded instrument executed by the Declarant.

### **ARTICLE 6**

#### **COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

##### **6.1 Creation of Lien and Personal Obligation of Assessments.**

Each Owner of an Assessable Lot or an Assessable Parcel is deemed to covenant and agree to pay to the Association all Assessments, Collection Costs and all other fees and costs which may become payable by such Owner to the Association under the Community Documents. All Assessments shall be established and collected as provided in this Declaration. Each Assessment, together with all interest thereon, shall also be the personal obligation of the Person who was the Owner of the Assessable Lot or Assessable Parcel at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner of an Assessable Lot or an Assessable Parcel shall be exempt from liability for Assessments because of such Owner's non-use of the Common

Area, abandonment of such Owner's Lot or Parcel or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner of an Assessable Lot or an Assessable Parcel. No diminution or abatement of Assessments or off-set shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of them.

## **6.2 Regular Assessments.**

At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget (the "Budget") of the estimated Association Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. Within thirty (30) calendar days after the adoption of the budget, the Association shall provide a summary of the budget to all Owners. The Budget shall also reflect the sources and estimated amount of funds required to pay such Association Expenses, which sources may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots and Parcels. The Budget shall separately reflect any Benefited Property Expenses.

Concurrently with the adoption of the Budget, the Board shall determine the amount of the Regular Assessment for each Assessable Lot and Assessable Parcel. The Regular Assessment for each Assessable Lot and Assessable Parcel owned by an Owner shall be the product of the number of Memberships allocated to the Lot or Parcel pursuant to Section 5.5 multiplied by the amount obtained by dividing the amount of Association Expenses to be assessed by the total number of Memberships allocated to all Assessable Lots and Assessable Parcels. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by New Mexico law, if any.

The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a Budget for any Assessment Period, then until and unless such Budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect.

If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Association Expenses for any reason, including, without limitation, nonpayment of Assessment, the Board may amend the Budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

## **6.3 Special Assessments.**

The Association may levy against each Assessable Lot and Assessable Parcel a Special Assessment for the purpose of (a) obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or (b) to pay unbudgeted expenses or expenses in excess of the amount budgeted. The Association shall not levy any Special Assessment unless the

Special Assessment is approved by Members holding two-thirds (2/3) of the votes cast with respect to the Special Assessment. No Special Assessment shall be levied during the Declarant Control Period unless the Special Assessment is approved in writing by the Declarant. The Special Assessment for each Assessable Lot and Assessable Parcel shall be the product of the number of Memberships allocated to the Lot or Parcel pursuant to Section 5.5 multiplied by the amount obtained by dividing the total Special Assessment by the total number of Memberships allocated to all Assessable Lots and Assessable Parcels.

#### **6.4 Enforcement Assessment.**

The Association may impose against an Owner as an Enforcement Assessment the following expenses: (a) any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; and (b) any monetary penalties levied against the Owner. The Enforcement Assessment shall be automatically imposed against an Owner at such time as the Collection Cost or other amounts are incurred by the Association or, in the case of a monetary penalty, the date the monetary penalty is imposed on the Owner by the Board.

#### **6.5 Benefited Property Assessments.**

All Association Expenses pertaining to the Maintenance of Limited Common Areas or pertaining to the providing of Special Services shall be shown separately in the budget adopted by the Board. The Association Expenses pertaining to the Maintenance of a Limited Common Area or to the providing of Special Services shall be assessed solely against the Lots and Parcels within the Benefited Property Assessment Area as established by the Supplemental Declaration designating the Benefited Property Assessment Area. No Association Expenses pertaining to the Maintenance of Limited Common Area or pertaining to providing Special Services shall be used in computing the Regular Assessments to be levied pursuant to Section 6.2. Unless otherwise provided for in the applicable Supplemental Declaration, Benefited Property Assessments shall be levied against the Assessable Lots and Assessable Parcels within the Benefited Property Assessment Area at a uniform amount per Membership. If the Board determines during any Assessment Period that any Benefited Property Assessment is, or will, become inadequate to pay all Association Expenses to be paid by the Benefited Property Assessment for any reason, including, without limitation, nonpayment of Benefited Property Assessments by Owners, the Board may increase the Benefited Property Assessment for that Assessment Period and the revised Benefited Property Assessment shall commence on the date designated by the Board.

#### **6.6 Obligation of Declarant for Deficiencies.**

Although the Declarant is not required to pay Assessments to the Association, the Declarant shall pay to the Association such funds as may be necessary, when added to the Regular Assessments levied by the Association, to pay all Association Expenses as they become due. Notwithstanding the foregoing, Declarant shall not have any obligation to pay any amounts during any calendar year in excess of the amount that Declarant would have paid if it were paying full assessments. Any payments made by the Declarant to fund the estimated amounts due under this Section in excess of Declarant's actual funding obligation under this Section shall, at Declarant's option, be credited toward payment of Declarant's next due assessment payment or refunded to the payor thereof; for example, if Declarant pays \$25,000 to the Association in the middle of a

calendar year to fund an estimated budget shortfall of the Association and the actual shortfall as of the end of the year would have been only \$20,000 in the absence of such payment, Declarant shall be entitled to a \$5,000 credit toward its next due assessment payment or a refund of \$5,000.

#### **6.7 Assessment Period.**

The period for which the Regular Assessment and Benefited Property Assessments shall be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month after the conveyance of the first Lot or Parcel to a Purchaser or such later date as may be selected by the Board of Directors and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

#### **6.8 Rules Regarding Billing and Collection Procedures.**

Regular Assessments and Benefited Property Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to an Owner shall not relieve any Owner of such Owner's liability for any Assessment or charge under this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot or Parcel changes during an Assessment Period, but successor Owners of Lots or Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners.

#### **6.9 Effect of Nonpayment of Assessments; Remedies of the Association.**

Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

The Association shall have a lien on each Lot and Parcel for any Assessment levied against that Lot or Parcel from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred

with respect to those Assessments which are secured by the Association's lien. If the Association records a notice of lien, the Association may charge the Owner of the Lot or Parcel against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

The Association's Lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments shall have priority over all liens, other interests and encumbrances except for: (a) liens and encumbrances Recorded before the recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges; and (c) the lien of any First Mortgage or seller's interest in a first Real Estate Contract recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot or Parcel through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot or Parcel which became payable prior to the acquisition of such Lot or Parcel by the First Mortgagee or other Person. Any assessments and charges against the Lot or Parcel which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, late fees, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots or Parcels purchased at such sale.

#### **6.10 Purposes for which Association's Funds May Be Used.**

The Association may use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing for promotion activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of Las Residencias and the Owners, Lessees and Residents; (d) contracting for services to be provided to Owners, Lessees and Residents; and (e) taking such other action as the Association deems necessary, appropriate or desirable for the management and administration of the Association or for the benefit of the Association or of Las Residencias.

#### **6.11 Surplus Funds.**

The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the

succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the financial security of the Association and the accomplishment of its purposes.

#### **6.12 Reserves.**

The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "Reserve Account") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three years, which study shall at a minimum include (a) identification of the major components of Las Residencias which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

#### **6.13 Initial Reserve Fee.**

To ensure that the Association shall have adequate funds in its Reserve Account to meet its expenses, each Person (other than the Declarant) who purchases or otherwise becomes the Owner of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, a sum equal to one fourth (1/4<sup>th</sup>) of the then current Annual Assessment attributable to the Lot payable by Owners other than Declarant. The funds paid pursuant to this Section shall be held in the Reserve Account created pursuant this Section 6.13. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

#### **6.14 Transfer Fee.**

Each Purchaser of a Lot or Parcel shall pay to the Association or the Association's managing agent immediately upon becoming the Owner of the Lot or Parcel a transfer fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot or Parcel. The intent of this Section is that a transfer fee shall be payable on the initial sale of a Lot by the Declarant to a Person other than a holder of any Declarant rights and on all resales of a Lot.

## ARTICLE 7

### MAINTENANCE

#### **7.1 Areas of Association Responsibility.**

The Association shall be responsible for the management, operation and Maintenance of all Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management, operation or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

#### **7.2 Lots.**

Each Owner of a Lot or Parcel shall be responsible for the Maintenance of his Lot or Parcel, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot or Parcel, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot or Parcel shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property or streets. All Parcels and Lots upon which no Residences, buildings or other structures, landscaping or Improvements have been constructed shall be maintained in a weed free and attractive manner.

#### **7.3 Assessment of Certain Costs of Maintenance and Repair.**

In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

#### **7.4 Improper Maintenance and Use of Lots or Parcels.**

In the event (a) any portion of any Lot or Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or Parcels or other areas of Las Residencias, (b) any portion of a Lot or Parcel is being used

in a manner which violates this Declaration, or (c) the Owner of any Lot or Parcel is failing to perform any of its obligations under the Community Documents, the Board may give notice to the offending Owner of the corrective action that must be taken and the date by which the corrective action must be completed. If the required corrective action is not completed by the completion date established by the Board, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

#### **7.5 Boundary Walls.**

Each wall or fence which is located between two Lots or Parcels shall constitute a boundary wall and, to the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply. The Owners of contiguous Lots or Parcels who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of contiguous Lots or Parcels who share a boundary wall shall each pay one-half (½) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (½) of such cost. In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owners. In the event any boundary wall encroaches upon a Lot or Parcel less than one foot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots or Parcels which share such boundary wall for so long as the boundary wall exists. If the encroachment exceeds one foot, the Owner of the Lot or Parcel on which the wall encroaches shall have the right to require the adjoining Owner to relocate the wall so that the wall does not encroach by more than one foot.

#### **7.6 Maintenance of Walls other than Boundary Walls.**

Walls (other than boundary walls) located on a Lot or Parcel shall be maintained, repaired and replaced by the Owner of the Lot or Parcel. Any wall which is placed on the boundary line between a Lot or Parcel and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the repair and maintenance of the surface of the wall which faces the Area of Association Responsibility. In the event any such wall encroaches upon the Area of Association Responsibility, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot or Parcel, as the case may be, for so long as the wall exists. Any wall which is placed on the boundary line between a Lot or Parcel and public right-of-way shall be maintained, repaired and replaced by the Owner of the Lot or Parcel, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.

## **7.7 Construction Activities.**

Normal construction activities and parking in connection with the construction of Improvements on a Lot or Parcel shall not be considered a nuisance or otherwise prohibited by this Declaration. Lots and Parcels shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot or Parcel during construction of improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of said storage areas. Each Owner shall be obligated to: (a) keep such Owner's Lot or Parcel, as well as surrounding areas of Las Residencias, including, without limitation, all pedestrian and road rights-of-way and drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials in connection with or related to construction activities by or for the benefit of such Owner; and (b) make reasonable efforts to protect from damage, and in any event to promptly repair or rebuild, any buildings, structures, landscaping or other improvements (including without limitation any improvements that are, or are intended to be, Common Area, Neighborhood Common Area, Areas of Association Responsibility or owned and/or maintained by the City, the County or any political subdivision or utility provider, e.g., pavement, curbs, sidewalks, landscaping, drainage facilities, hydrants, grade stakes, surveyor markers, etc.) that are damaged or destroyed through the act of any Owner or an Owner's Agent in connection with or related to construction activities by or for the benefit of such Owner, whether or not such act is negligent or otherwise culpable.

## **7.8 Installation of Landscaping.**

Within one hundred twenty (120) days after close of escrow on a Lot, landscaping must be installed and substantially completed in the front yard of the Lot. All landscaping in the front yard and all landscaping in any portion of the back yard which is Visible From Neighboring Property must comply with the Design Guidelines and must be approved by the Design Review Committee, and any alterations or modifications made to the landscaping of a Lot as originally installed must be approved in advance by the Design Review Committee. All landscaping must be installed in accordance with the grading and drainage plan for Las Residencias approved by the City. If any Owner does not install and complete approved landscaping within the applicable time required by this Section, the Association, after giving the Owner thirty (30) days written notice to cure any such default, shall have the right to cause the necessary landscaping to be installed, and in such event, the Owner shall pay the Association, upon demand, all costs incurred by the Association in connection with the installation of the landscaping, together with interest thereon at the rate of fifteen percent (15%) per annum.

## ARTICLE 8

### USE RESTRICTIONS ON USE OF LOTS AND PARCELS

#### **8.1 Residential Use.**

All Lots and Parcels shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or Parcel or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no more employees than those for whom parking can be accommodated on the Resident's driveway; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents.

The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

#### **8.2 Nuisances.**

No rubbish or debris of any kind shall be placed or permitted to accumulate on any Lot or Parcel, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such other property. No condition shall be permitted to exist or operate upon any Lot or Parcel so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any

Lot or Parcel. No Person shall permit anything or any condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant diseases or noxious insects. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind.

### **8.3 Animals.**

No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot or Parcel, except that a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine (a) whether a particular animal or bird is permitted to be kept on a Lot pursuant to this Section and (b) what is a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets for any particular Lot, and the Board's determination shall be final. All dogs, cats, birds or animals permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

No dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section shall be maintained so as to be Visible From Neighboring Property without prior written approval of the Design Review Committee. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular dog, cat, bird or animal is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

The Board may adopt rules and regulations further restricting and governing animals within Las Residencias, which rules may include, without limitation rules providing for the removal from Las Residencias of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

### **8.4 Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot.

### **8.5 Vehicles and Parking.**

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all-terrain vehicle, utility vehicle, pickup

truck or other motor vehicle; and (b) "Streets" means the streets within Las Residencias shown on any Plat.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot or Parcel so as to be Visible when viewed from 6' height from Lauren Loop.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot, Parcel or the Common Area. No Motor Vehicle shall be parked on a Parcel without the prior written approval of the Board.

No Motor Vehicle which exceeds eight feet (8') in height or exceeds twenty-two feet (22') in length or which is designed or used for carrying merchandise, supplies or equipment for commercial purposes such as ladder racks, or which includes advertisement accessories or signs of any kind such as vehicle roof top signs shall be parked on a Lot or on a Street or on parts of the Common Area except for: (a) the temporary parking on a Street or a driveway situated on a Lot of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of an Owner, Lessee or Resident, (b) the parking for not more than seventy-two (72) hours within any thirty (30) day period of recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident on a Street or on a driveway situated on a Lot for the purpose of loading, unloading or cleaning, subject to such limitations as may be established by the Board; (c) the parking of a Motor Vehicle which displays in a simple manner on the exterior of the Motor Vehicle any business name, logo, sign or other commercial information and which is owned or leased by the Owner, Lessee or Resident of the Lot in a driveway or in a garage situated on the Lot; (d) the parking of police vehicles or other public safety vehicles; and (e) the parking on the Streets or the Common Area of Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association.

It is the intent of this Section to limit parking on the Streets. No Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the Streets if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, Lessee or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by the Declarant; or (c) a driveway expansion constructed on the Lot with the approval of the Design Review Committee.

It is also the intent of this Section to limit the parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of the Lot in the driveway and in any driveway expansion situated on the Lot. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage for the parking of such Motor Vehicles. If space is not available in the garage, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot by the Declarant. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on a driveway expansion constructed with the approval of the Design Review Committee if space for the parking of such Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot by the Declarant. The parking of a Motor Vehicle owned or leased by an Owner, Lessee or Resident of

a Lot on a driveway expansion is also subject to such rules and regulations as may be adopted by the Board. Any vehicle parked on a driveway or driveway extension must be completely contained on that driveway or extension. Vehicles must not be parked in such a way that the vehicle extends over the sidewalk.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or on any part of the Common Area. No inoperable Motor Vehicle may be stored or parked on the Streets or on any part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

#### **8.6 Garages.**

No garage or carport shall be converted to living spaces or altered or used for purposes which would prevent the use of the garage for the parking of at least two automobiles, except that the Declarant may use a garage in one or more model homes for a sales office and/or a construction office. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

#### **8.7 Rooftop HVAC Equipment Prohibited.**

No heating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property. All units shall be ground mounted. Window Units are not permitted. This prohibition shall not be applied to prohibit the installation of solar collectors on the roofs of Residences so long as the solar collectors are installed in the location which is least visible from the street upon which the Residence is located and which does not impair the operation or the efficiencies of the solar collector, which location shall be approved in writing by the Design Review Committee after its review of plans or specifications for the solar collectors, as generally addressed in Section 3.2.

#### **8.8 Basketball Goals and Backboards.**

Portable basketball goals or backboards may be kept or used on a Lot so long as they are stored within 5' of the garage when not in use. Permanent basketball goals or backboards attached to a free standing pole may be constructed, installed or maintained on a Lot, provided the location, design, material and color of the pole and the basketball goal or backboard are approved by the Design Review Committee and they are used in accordance with the Association Rules which may govern the hours of use. Lighting of basketball goals or backboards must be submitted and approved by the Design Review Committee prior to installation.

**8.9 Playground Equipment.**

No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

**8.10 Rental of Lots.**

No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Association Rules by the lessee or the other occupants shall be a default under the lease.

**8.11 Screening Materials.**

All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the original construction of such Improvements by a Declarant or as approved by the Design Review Committee pursuant to Article 3.

**8.12 Lights.**

Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.

**8.13 Window Cover Materials.**

Each Owner (other than the Declarant) of a Lot shall install drapes, shutters, blinds or other window coverings on all windows of the Residence within sixty (60) days after becoming the Owner of the Lot. All window coverings must comply with the provisions of this Section and the Design Guidelines. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) and no sheets, bedding or similar items shall be installed or placed upon the outside or inside of any windows of a Residence without the prior written approval of the Board. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be constructed or installed without the prior written consent of the Board.

#### **8.14 Trash Containers and Collection.**

No garbage or trash shall be placed or kept on any Lot or Parcel except in covered containers of a type, size and style which are approved by the Design Review Committee. Garbage or trash containers and recyclable containers kept on a Lot must be kept in the garage or behind the masonry wall enclosing the rear yard of the Lot in a manner so that the containers are not Visible From Neighboring Property, except when the containers are placed on the street adjacent to the Lot to make the containers available for collection. Containers may be placed at the curb no earlier than 5:00 pm the day before collection and must be returned so as not to be Visible From Neighboring Property by 10:00 pm the day of collection.

#### **8.15 Temporary Occupancy and Temporary Buildings.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Design Review Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

#### **8.16 Antennas.**

Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "FCC Rule"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be installed on any Lot or Parcel unless approved by the Board of Directors. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed on a Lot or Parcel without the prior approval of the Board of Directors provided the antenna, satellite dish or receiving device is placed inside a Residence or other Building or is placed on the portion of the Lot or Parcel which is the least Visible From Neighboring Property and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. The Board of Directors shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Board of Directors shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

#### **8.17 Utility Service.**

No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Design Review Committee.

**8.18 Overhead Encroachments.**

No tree, shrub, or planting of any kind on any Lot or Parcel shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of less than eight (8) feet without the prior written approval of the Design Review Committee.

**8.19 Signs.**

No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, wall or other improvement upon such Lot so as to be Visible from Neighboring Property or mounted on any vehicle or trailer parked or driven in the Property or carried on any person or by any other means displayed within the Property except the following: (a) "For Sale" signs may not be posted on any Lot except unless approved in writing by the Design Review Committee, (b) signs or billboards that may be erected by the Declarant, (c) political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 45 days in advance of the election to which they pertain and are removed within 2 days after the election, (d) emblems or bumper stickers advertising an Owner's school or business mounted upon vehicles parked or driven within the Property, (e) such signs as may be required by legal proceedings, or prohibition of which is precluded by law, (f) such signs as may be required for traffic control and regulation of Common Areas, (g) such signs as may be approved by Declarant during the Declarant Control Period, street and directional signs, and (h) security monitoring signs or security monitoring window emblems (maximum of one per window). "For Rent" and "For Lease" signs are strictly prohibited.

**8.20 Drainage.**

No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for Las Residencias, or any part thereof, or for any Lot or Parcel as shown on the drainage plans on file with the City.

**ARTICLE 9**

**DISPUTE RESOLUTION**

**9.1 Defined Terms.** As used in this Article 9, the following terms shall the meaning set forth below:

- (a) "**Alleged Defect**" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the of the Common Area or any Lot, or the buildings, Residences and other structures or improvements located thereon, by a Declarant Party including, without limitation, any failure to comply with applicable building codes or federal, state or local laws, ordinances or regulations or any failure to comply with any express or implied warranty or standard of workmanship.

(b) **"Declarant Party"** means: (i) the Declarant and its members, managers, officers and employees; (ii) any general contractors, subcontractors, material suppliers, labor suppliers, architects, engineers, surveyors, consultants or other Persons who furnished labor or services or supplied materials in connection with the initial design, development and/or construction of the Residences, buildings, structures and other Improvements in Las Residencias or in connection with any addition, renovation, repair or reconstruction of any Residence, building, structure or other Improvement in Las Residencias; or (iii) any employee or other representative of the Declarant who serves as a director or officer of the Association.

(c) **"Claim"** means: (i) any claim or cause of action by a Claimant against a Declarant Party arising out of or related in any way to an Alleged Defect, including, without limitation, any claim or cause of action for breach of express or implied warranties or that a Declarant Party was negligent in the planning, design, engineering, grading, construction or development of the Project; or (ii) any claim or cause of action against a Declarant Party arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

**9.2 Agreement to Resolve Certain Disputes Without Litigation.** The Association, all Owners and all Declarant Parties agree that it is in the best interests of the Association, the Owners and the Declarant Parties to encourage the amicable resolution of Claims and to resolve Claims without the emotional and financial costs of litigation. Therefore the Association, all Owners and all Declarant Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 11.

**9.3 Notice of Alleged Defect.** The Association or any Owner who becomes aware of any Alleged Defect which could be the basis for a Claim against any Declarant Party shall give written notice (the "Notice of Alleged Defect") promptly to each Declarant Party who could be responsible for the Alleged Defect. The Notice of Alleged Defect shall state plainly and concisely: (a) the nature and location of the Alleged Defect; (b) the date on which the Association or Owner giving the Notice of Alleged Defect first became aware of the Alleged Defect; and (c) whether the Alleged Defect has caused any damage to any persons or property. Following the receipt by a Declarant Party of a Notice of Alleged Defect, the Declarant Party and any of its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to the Association or Owner giving the Notice of Alleged Defect to enter onto or into, as applicable, the Common Area or any Lot for the purposes of inspecting and/or conducting testing to determine the existence, nature and extent of the Alleged Defect and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions it deems reasonable and necessary under the circumstances. Nothing set forth in this Section 9.3 shall be

construed to impose any obligation on any Declarant Party to inspect, test, repair or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated under applicable law or any warranty provided by the Declarant or any other Declarant Party. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace under this Section shall be irrevocable and may not be waived or otherwise terminated, except by written document, in recordable form, executed and recorded by the Declarant Party. In no event shall any statute of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of the Alleged Defect. If the Alleged Defect is not repaired or replaced to the satisfaction of the Association or Owner giving the Notice of Alleged Defect within sixty (60) days after the Notice of Alleged Defect is given to the Declarant Party, then the Association or Owner may proceed with the preparation of the delivery of a Notice of Claim as provided in Section 9.4.

**9.4 Notice of Claim.** The Association or any Owner who contends or alleges to have a Claim (a "Claimant") against any Declarant Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Declarant Party or initiating any legal action, cause of action, proceeding, or arbitration against any Declarant Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Declarant Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Declarant Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of New Mexico that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of New Mexico under New Mexico law, including, but not limited to, Engineering and Surveying (§61-23-1 *et seq.* NMSA 1978 Comp.), Construction Industries (§60-13-1 *et seq.* NMSA 1978 Comp.) and Brokers (§61-29-1 NMSA 1978 Comp. *et Seq.*) (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain a preliminary expert opinion that the acts or omissions of the Licensed Professional were the cause of the Alleged Defect.

**9.5 Binding Arbitration.** A Claimant shall have ninety (90) days after the date of the Claim Notice to submit the Claim to binding arbitration in accordance with this Section 9.6. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant

may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. The Association, the Owners and all Declarant Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 9.5. The Association, the Owners and all Declarant Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Declarant Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration. If the Claimant submits the Claim to binding arbitration in accordance with this Section 9.5, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the AAA Commercial Arbitration Rules or such other rules as the AAA may determine to be applicable (the "AAA Rules").

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the AAA Rules. In the event of a conflict between the AAA Rules and this Section 9.5, the provisions of this Section 9.5 shall govern.

(c) **Appointment of Arbitrator.** The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 9.5 as the "Arbitrator".

(d) **Qualifications of Arbitrator.** The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) **Disclosure.** Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 9.5 (c).

(f) **Compensation.** The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) **Preliminary Hearing.** Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) **Management of the Arbitration.** The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) **Confidentiality.** All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) **Hearings.** Hearings may be held at any place within Sandoval County, New Mexico designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) **Final Award.** The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

**9.6 Right to Enter, Inspect, Repair and/or Replace.** Following the receipt by a Declarant Party of a Claim Notice with respect to an Alleged Defect, the Declarant Party and its

employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Declarant Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 9.6 shall be construed to impose any obligation on any Declarant Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant Party is not otherwise obligated. The right of a Declarant Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a written document, in recordable form, executed and Recorded by the Declarant Party. In no event shall any statutes of limitations be tolled during the period in which a Declarant Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

**9.7 Use of Funds.** Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Claimant receiving the judgment, award or settlement is the Association, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

**9.8 Approval of Arbitration or Litigation.** The Association shall not deliver a Claim Notice to any Declarant Party or commence any legal action or arbitration proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 9.4.

**9.9 Statute of Limitations.** All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 9.5. If the arbitration proceedings are not initiated within the time period provided by New Mexico law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

**9.10 Federal Arbitration Act.** Because many of the materials and products incorporated into the Project are manufactured in other states, the development and conveyance of the Lots evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

**9.11 Conflicts.** In the event of any conflict between the provisions of this Article 9 and the terms of any express warranty provided to a Purchaser by the Declarant or a builder or any

third party home warranty company in connection with the purchase of a Lot from the Declarant or a builder, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 9.9 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

**BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT OR PARCEL, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE NEW MEXICO STATUTES ANNOTATED 1978 COMP. PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 9 AND WAIVES THE RIGHT TO PURSUE ANY DECLARANT PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 9. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 9, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION AND EACH OWNER FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT OR PARCEL, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.**

**IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY DECLARANT PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 9 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE DECLARANT PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE SANDOVAL COUNTY DISTRICT COURT OR OTHER COURT OF COMPETENT JURISDICTION FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.**

**IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 9 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER AND THE ASSOCIATION HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND**

**ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.**

**ARTICLE 10**

**INSURANCE**

**10.1 Scope of Coverage.**

Commencing not later than the time of the first conveyance of a Lot or Parcel to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of Las Residencias which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of New Mexico;

(d) Directors and officers liability insurance providing coverage in an amount determined by the Board, but not less than \$1,000,000;

(e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(f) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association ; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy. The premiums for any insurance obtained by the Association pursuant to this Section 10.1 shall be included in the budget of the Association and shall be paid by the Association.

## **10.2 Certificates of Insurance.**

An insurer that has issued an insurance policy under this Article 10 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article 10 may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

## **10.3 Payment of Insurance Proceeds.**

With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 10, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 10.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

## **10.4 Repair and Replacement of Damaged or Destroyed Property.**

Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the

damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance.

**10.5 Residence Insurance.**

Each Owner shall be responsible for insuring all structures located on the Owner's Lot or Parcel as well as personal contents of the Residence. The Association is not obligated to provide property insurance coverage for the individual Lots, Parcels or Residences.

**ARTICLE 11**

**GENERAL PROVISIONS**

**11.1 Enforcement.**

The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

(a) imposing reasonable monetary fines after notice and an opportunity to be heard by the Board is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;

(b) suspending an Owner's right to vote;

(c) suspending any Person's right to use any recreational facilities situated on the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot or Parcel;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot or Parcel if the Owner fails to pay any Assessment or other charge owed to the Association within fifteen (15) days after demand for payment is made;

(e) exercising self-help or taking action to abate any violation of the Community Documents;

(f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot or Parcel in violation of this Declaration and to restore the Lot or Parcel to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in Las Residencias;

(h) towing vehicles which are parked on Common Area in violation of this Declaration or the Association Rules;

(i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled;

(j) record a written notice of a violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (ii) the legal description of the Lot or Parcel against which the notice is being Recorded; (iii) a brief description of the nature of the violation; and (iv) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot or Parcel, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or Parcel or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association may, but shall not be obligated to, take any enforcement action if the Board determines, in its sole discretion, that because of the strength of any possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. All rights and remedies of the Association under the Community Documents or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

Each Owner, the Association and the Declarant shall have the right to enforce this Declaration in any manner available at law or in equity. The failure of the Association, the Declarant or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association, the Declarant

or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association, the Declarant or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

**11.2 Duration; Termination.** This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind Las Residencias and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by (a) the Declarant so long as the Declarant owns one or more Lots or Parcels, and (b) by the Owners holding ninety percent (90%) or more of the Eligible Votes. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

**11.3 Amendments.**

This Declaration may be amended at any time by the affirmative vote or written consent of Owners holding not less than two-thirds (2/3) of the Eligible Votes. During the Declarant Control Period, any amendment to this Declaration must be approved in writing by the Declarant. No amendment to Article 9 or this Section 11.3 shall be effective unless the amendment is signed by the Declarant during the Declarant Control Period. Additionally, no amendment to this Declaration made at any time that would have a material adverse effect upon any of the rights, privileges, powers and options of the Declarant shall be effective unless the amendment is signed by the Declarant.

Notwithstanding any other provision of this Declaration to the contrary, this Declaration may not be amended to conflict with the conditions of approval of the Plat by the City unless the Plat is vacated or amended.

Any amendment approved by the Owners pursuant to this Section shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment. To any extent that an assignment and assumption of Declarant rights constitutes an amendment of this Declaration or a Supplemental Declaration, the Declarant parties to that assignment and assumption may amend it by recorded, written agreement signed by them, without the consent of the other Owners or of the Association.

Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

**11.4 Interpretation.**

Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of the Community Documents. In the absence of any arbitration or adjudication to the contrary by a body having jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or the Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules, the Bylaws shall control. Except for judicial construction, the Design Review Committee shall have the exclusive right to construe and interpret the Design Guidelines. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Design Review Committee's construction or interpretation of the Design Guidelines shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

#### **11.5 Severability.**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

#### **11.6 Change of Circumstances.**

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

#### **11.7 Laws, Ordinances and Regulations.**

The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within Las Residencias is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

#### **11.8 References to this Declaration in Deeds.**

Deeds to and instruments affecting any Lot or Parcel or any other part of Las Residencias may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

#### **11.9 Gender and Number.**



My Commission Expires:

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**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT B**

**ADDITIONAL PROPERTY**