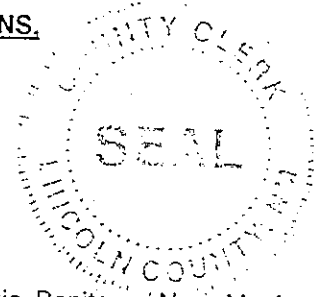


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VISTA RIO BONITO UNIT II

DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS



KNOW ALL MEN BY THESE PRESENTS:

This Declaration, made on the date hereinafter set forth by Vista Rio Bonito, a New Mexico Limited Liability Company, duly authorized to do business in the state of New Mexico, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of that certain Tract of land known as **VISTA RIO BONITO Subdivision, Unit II**, a subdivision of 621 acres of land situated in Lincoln County, New Mexico (hereinafter referred to as the "Property" or the "Subdivision") with the plat ("Plat") of **VISTA RIO BONITO Subdivision, Unit II**, (hereinafter referred to as "Vista"), being recorded in the office of the County Clerk of Lincoln County, New Mexico on the 18th day of May, 2007, 2006, after having been approved as provided by law, and being recorded in Cabinet "I", Page 727, of the Map Records of Lincoln County, New Mexico.

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against Vista Rio Bonito, Unit II, in order to establish a uniform plan for its development, improvement and sale, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Vista Rio Bonito, Unit II.

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon Vista Rio Bonito, Unit II, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said property, which Restrictions shall run with said property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof. Developer also declares the Vista Rio Bonito, Unit II, shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1.01 "Association" shall mean and refer to the **Vista Rio Bonito Property Owners Association, Unit II** and its successors and assigns.

Section 1.02 "Vista Rio Bonito II" shall mean and refer to the subdivision filed of record as referenced above.

Section 1.03 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.04 "Builders" shall mean and refer to persons or entities that purchase Tracts and build speculative or custom homes thereon for third party purchasers.

Section 1.05 "Common Area" shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners.

Section 1.06 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Tract.

Section 1.07 "Developer" shall mean and refer to Vista Rio Bonito, LLC, and its successors and assigns.

Section 1.08 "Tract" shall mean and refer to any plot of land identified as a Tract or home site on the Plat of Vista. For purposes of this instrument, "Tract" shall not be deemed to include any portion of the "Common Areas" or "Unrestricted Reserves", (defined herein as any Common areas and Unrestricted Reserves shown on the Plat) in Vista, regardless of the use made of such areas.

Section 1.09 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Tract which is a part of the Subdivision, including (i) purchasers pursuant to a Real Estate Contract, but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

ARTICLE II

RESERVATIONS, EXCEPTION AND DEDICATIONS

Section 2.01 Recorded Subdivision map of the Property. The plat ("Plat") of Vista dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to Vista. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the plat of Vista recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Lincoln County, New Mexico, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone lines or lines, storm surface drainage, cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Tracts. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or

servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements. Developer also reserves the right to grant ingress and egress easements across the private roads within the subdivision to other properties, within Developer's discretion, provided however, said properties must be required to pay their fair share of upkeep and maintenance as determined by the Association. Individual tract owners are also responsible for maintaining all drainage structures on their property, including but not limited to, stock ponds, erosion control dykes, silt basins, and water barred areas.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by developer to any of the tracts by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Tracts. The Owners of the respective Tracts shall not be deemed to own pipes, wires, conduits or other service lines running through their Tracts which are utilized for or service other Tracts, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Tract. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. Unless otherwise stated in the recorded easement documents, the Owner of each Tract shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Tract, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Tract subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any Tract for residential purposes other than three dwelling units per each Tract, including guest/servants house unless a variance from said maximum number of units is approved by the Architectural Control Committee. Said guest/servants house must contain a minimum of 500 square feet, provided however, if said guest/servants house be built prior to the main dwelling(s), the main dwelling(s) must be completed within three (3) years after the completion of the guest/servants house. The main dwelling(s) must have at least 1500 square feet of heated living area, excluding porches, breezeways, and garages, and be built with new construction material. Detached garages, work shops, and barns may be constructed on the property prior to the main dwelling(s) being built, so long as they are of good construction, kept in good repair, and are not used for residential purposes. Plans, specifications and location of all structures and improvements must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property. The term "dwelling" does not include double wide manufactured homes, or single wide mobile homes, and said homes are not

permitted within the Subdivision. Any building, structure, or improvement commenced on any Tract shall be completed as to exterior finish and appearance within twelve (12) months from the commencement date. All Tracts shall be for residential purposes. No junk yard, pipe yard, wrecking yard, auto sales or other similar business activity shall be allowed on any Tract. No machine parts, appliances, or any other such material may be kept on any Tract in an exposed manner. All such materials must be kept in an enclosed workshop, storage building, or garage. The breeding and sale of horses from time to time by an individual property owner shall not be construed as a commercial use of the property.

Section 3.02 Location of the Improvements upon the Tract. No building of any kind shall be located on any Tract nearer than on hundred (100) feet to the side property line or no nearer than one hundred (100) feet to any public road and no nearer than on hundred (100) feet to the rear property line. Provided however, as to any Tract, the Architectural Control Committee may waive or alter any such setback line if, the Architectural Control Committee in the exercise of the Architectural Control Committee's sole discretion, such waiver, or alteration is necessary to permit effective utilization of a Tract. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Lincoln County, New Mexico. All dwellings placed on Subject Property must be equipped with septic tank or other sewage disposal system meeting all county and state applicable laws, rules, standards and specifications, and all such dwellings must be served with water and electricity.

Section 3.03 Use of Temporary Structures. No structure of a temporary character, whether basement, shack, garage, barn or other out building shall be maintained or used on any Tract at any time as a residence, either temporarily or permanently; provide, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Tracts, selling or constricting residences and constricting other improvements within the Subdivision. A camper or recreational vehicle may be kept on the property for no more than 90 days unless stored in conjunction with a permanent residence. A camper or recreational vehicle may be kept on the property for no longer than 14 days out of a 30 day period unless (i) equipped with a septic tank, or other sewage disposal system, meeting all applicable laws, rules, standards and specifications, (ii) be served with water from a well located on the Tract, and (iii) be served with electricity from a public utility. Any such use for storage of a camper or recreational vehicle shall be done in a manner which minimizes exposure to the road.

Section 3.04 Wall and Fences. Walls and fences, if any, must be approved prior to construction by the Architectural Control Committee and shall not be closer to front street property lines than the Tract boundary line and no closer than the Tract boundary line to side street lines.

Section 3.05 Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Tract which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally, is created, and (d) the entity or activity maintains an office or place of business elsewhere. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.06 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped or burned at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3.07 Junked Motor Vehicles Prohibited. No Tract shall be used as a depository for abandoned or junked motor vehicles. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Tract. Any motor vehicle being repaired or restored must be housed in the garage or out-building for that purpose.

Section 3.08 Signs. No signs, advertisement, billboards or advertising structure of any kind may be erected or maintained on any Tract without the consent in writing of the Architectural Control Committee. Declarant or President of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Tract in violation of these restriction, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 3.09 Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Tract except one (1) horse or one (1) llama per two (2) acres, not to exceed a total of five (5) animals per tract. Provided, however, animals being raised for 4-H school sponsored programs will be permitted. No pigs or hogs will be permitted under any circumstances or programs. All horses and 4-H animals being raised by individual Tract owners must be kept in a fenced area on the owner's Tract. Dogs, cats, or other common household pets may be kept on a Tract. Dogs must be kept in a kennel, dog run, or fenced in area that confines said dog(s) to that area. Dogs will not be permitted to run loose in the Subdivision and must be vaccinated for rabies according to State law once a year and registered with Lincoln County once a year. Horses, 4-H animals, and household pets at no time shall become a nuisance or threat to other owners.

Section 3.10 Grazing. Grass and soil cover are extremely fragile. Open grazing shall be limited and no Tract at any time may be overgrazed. Any livestock allowed on any Tract shall have stable facilities. Further, in the event that any animals cause excess erosion or damage to grass or soil cover, the Architectural Control Committee may require the owner to remove such animals.

Section 3.11 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Tract. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Tract.

Section 3.12 Drainage. Natural established drainage patterns of streets, Tracts or roadway ditches will not be impaired by any person or persons. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow, provided however, all driveway culvert must be a minimum of eighteen inches (18") in diameter. A driveway permit is required from the Architectural Control Committee, prior to driveway construction. Drainage culvert installation is subject to the inspection and approval of the Architectural Control Committee and is to meet County Requirements. All runoff created by any construction activities shall be retained on the tract where such activities originated. Treatment to prevent runoff shall include holding ponds, erosion control mulching, terracing, or other best management practices as approved by the EPA.

Section 3.13 Prohibition on Re-subdivision. The term "tract" as used herein shall mean a tract as shown on the plat. No tract within Vista Rio Bonito, Subdivision, Unit II may be re-subdivided in any manner.

Section 3.14 Flow of Water(A). It is recognized that the water flowing in the Rio Bonito is a valuable asset to the Subdivision. The Developer desires to protect the quantity and quality of the water for the enhancement of the area and enjoyment by all owners within the Subdivision. Therefore, no water shall be severed or diverted for any purposed from any creek or natural waterway by pumping or by any other means whatsoever. No action shall be taken which could result in reducing the flow, or the quality of the water in such waterway. Any and all debris in any waterway shall be removed by the owner of that land, if necessary to (i) prevent the occurrence of

a dam in violation of this Section, or (ii) prevent a reduction in the water quality. Dams may be built on creeks or natural waterways only if:

- (1) Written permission is obtained from the Owner of land adjacent to such waterways on both sides;
- (2) Such dam will not be built so as to back water up or inundate the land of another owner, unless written easement is obtained from such other owner;
- (3) Such dam will not cause the flooding of any roadway; and
- (4) Any necessary governmental permits are obtained.

Section 3.14(B). Use of landscaping to conserve water. Such as limited grass and type of grass used, trees, retention of rain water in barrels and cisterns, subsurface irrigation systems and use of mulch, shall be used.

Section 3.14(C). Maintenance of Unimproved Tracts. Owners shall maintain unimproved tracts in good condition, free and clear of weeds, trash and debris in accordance with County standards. Xeriscaping is encouraged. Growth levels, if reasonably possible and aesthetically desirable, should be kept below twelve inches (12") in height.

Section 3.15 Compliance. In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, without liability to the Owner, Contractor or any occupants of the Tract in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Tract, cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration. Payment for charges shall be payable on the first day of the next calendar month.

ARTICLE IV.

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control.

- (a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced or changes made in the design or exterior appearance thereof (including, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original constructed, on any Tract in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specification for the construction or alteration of such improvement or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument.
- (b) Each application made to the Committee, or to the Developer, shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alteration) to be done on such Tract, including plot plans showing location of buildings, driveways, or other improvements on the Tract.

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Section 4.02 Architectural Control Committee.

- (a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the ("Committee") in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee", as used in this Declaration, shall mean or refer to the Developer or to the **VISTA RIO BONITO Unit II** Architectural Control Committee composed of members of the Association, as applicable.
- (b) On or after such time as fifty percent (50%) of all of the Tracts in all the sections of the Subdivisions are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control to the Association to be placed of record in the Real Property Records of Lincoln County, New Mexico (which instrument shall include the Control Transfer Date). Thereupon, the Association shall elect a committee of two (2) members to be known as **the VISTA RIO BONITO Unit II** Architectural Control Committee. From and after the Control Transfer Date, each member of the Committee must be an Owner of property in some section of the Subdivision. Additionally, the Developer shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Lincoln County, New Mexico in the Real Property Records of Lincoln County, New Mexico.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submissions, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur liability by reasons of the good faith exercise thereof.

Section 4.05 Variance. The developer or the Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, Tract configuration, Tract size, hardship, aesthetic or environmental considerations require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines. Such variances must be evidenced in writing and shall become effective when

signed by the Developer or by at least a majority of the members of the committee. If such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance effect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

ARTICLE V

VISTA RIO BONITO PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any Tract which is subject to the Maintenance charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, shall be a "Member" of the association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Tract owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Tract. Regardless of the number of persons who may own a Tract (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Tract. Additionally, the Directors of the Association must be members of the Association (as more particularly described in the By-laws). Ownership of the Tract shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association.

Section 5.02 Non-Profit Corporation. VISTA RIO BONITO Unit II Property Owners Association, Inc., a Nonprofit Corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and By-laws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall rest in said corporation.

Section 5.03 By-laws. The Association has adopted or may adopt whatever By-laws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Tracts and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common areas and such right shall be appurtenant to and shall pass with the title to every assessed Tract, subject to the following provisions:

- (a) the right of the Association, with respect to the Common areas, to limit the number of guests of Owners;
- (b) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Tract remains unpaid;
- (c) the right of the Association to suspend the Member's voting rights and the Member's and Related User's right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the Rules and Regulation", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation.

ARTICLE VI

MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation.

- (a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", such shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Tract (or residential building site) to the Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Provided, however if such owner owns more than one Tract in the Subdivision, such Owner shall pay only twice the assessment of one (1) Tract no matter how many Tracts are owned.
- (b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Tract. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Tract.
- (c) The initial amount of the Maintenance Charge applicable to each Tract shall be set by the developer.
- (d) The Association, from and after the Control Transfer Date, shall have the further right at any time, with a majority vote of all association members, to adjust or alter said Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder

Section 6.03 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Tract in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Tract which may be foreclosed pursuant to law and in the manner in which the laws of the State of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Association shall be entitled to reasonable attorney's fees, and costs of foreclosure. Following any such foreclosure, each occupant of any such Tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible entry detainer.

In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

Section 6.04 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder the Association may file a claim or lien against the Tract of the delinquent Owner by recording a notice ("Notice of Lien")

setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Tract against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the board of Directors to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Liens Subordinate to Mortgages. The Lien described in the Article VI shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Tract and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Tract who obtains title to such Tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Tract free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Tract which accrued prior to the time such holder acquired title. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessment thereafter becoming due or from the lien thereof. any other sale or transfer of a Tract shall not affect the Association's lien for Maintenance Charges or other charges or assessment. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the association's proposed foreclosure of lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association pursuant to the provisions of the Article VI.

Section 6.06 Purpose of the Maintenance Charges. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the owners of the subdivision which hereafter may become subject to the jurisdiction of the Associations. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VII, including the maintenance of any Common areas, roads, snow removal, any Drainage Easements and the establishment and maintenance of a reserve fund for maintenance of any Common Areas. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time to be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the By-laws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the

judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6.07 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually information on the Maintenance

Fund.

ARTICLE VII

PRIVATE ROADS

Section 7.01 Membership. The plat as described in Article II, Section 2.01 herein provides for a 50 foot wide private road over and across all Tracts within the subdivision. The Property Owner's Association shall be in charge of the maintenance of said private roads, with the power to make assessments as necessary for said maintenance. Every person or entity who is a record owner of any Tract of said subdivision shall be a member of the Association, which is hereby formed for the purpose of the maintenance of said private roads. Regardless of the number of persons who may own a Tract (such as husband and wife or joint tenants, etc.), there shall be but one membership for each Tract. Ownership of the Tract shall be sole qualification for membership. Each Tract shall be entitled to one (1) vote on behalf of the Association.

Section 7.02 Owner's Right of Use of Private Roads. Every owner of said Tracts shall have a beneficial interest of use of said private roads for the purpose of ingress and egress to each Owner's Tract, and such right shall be appurtenant to and shall pass with the title to every Tract affected by said private roads, but subject to the following provisions:

- a) The right of the Association, with respect to the private roads, to limit the size, weight and type of vehicle which may be operated on said private roads;
- b) The right of the Association to temporarily disrupt use of the private roads for the purposes of maintenance and/or repair of the private roads for whatever period of time necessary to complete said repairs or maintenance which have been deemed necessary by the Association.
- c) The right of the General Services Department of the State of New Mexico to suspend use of the private roads for the purposes of effecting maintenance or repairs to the water pipeline located upon the road;
- d) The right of the Association to suspend members' voting rights as well as the right to use the private roads during any period in which any road repair and maintenance charge or assessment against the member's Tract remains unpaid; this provision limiting the use of the private roads shall also apply to family, guests and designated parties of the suspended member;
- e) The right of the Association to suspend the member's voting rights after notice and hearing by the Board of Directors of the Association, for the infraction or violation by such member of this Declaration, or the "Rules and Regulation," as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period no to exceed sixty (60) days following the cessation or curing of such infraction or violation.

Section 7.03 Road Repair and Maintenance Fund and Obligation. Each member of the Property Owners Association, by accepting the deed of the Tract impacted by the private roads, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association an annual charge (the "road repair and maintenance charge"), and any other assessments or charges hereby levied. The road repair and maintenance charge and any other assessments or charges hereby levied, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Tract and shall be a continuing lien upon the property against which each such road repair and maintenance charge and other charges and assessments are made.

Section 7.04 Basis of the Road Repair and Maintenance Charge.

- a) The road repair and maintenance charge referred to shall be used to create a fund to be known as the "road repair and maintenance fund," which shall be used for the repair and maintenance of the private roads as deemed necessary by the Board of Directors of the Association; and each such road repair and maintenance charge (except as otherwise hereinafter provided) shall be paid by the owner of each Tract to the Association. The road repair and maintenance charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year.
- b) Any road repair and maintenance charge not paid within thirty (30) days after the due date shall bear interest from the due date at the less of (i) the rate of eighteen percent (18) per annum; or (ii) the maximum rate permitted by law. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the hereinafter described lien against the owner's tract. No owner may waive or otherwise escape liability for the road repair and maintenance charge by non-use of the private roads or by abandonment of the tract for the private road thereon.
- c) The initial amount of the road repair and maintenance charge applicable to each Tract shall be set by the Developer. All other matters relating to the road repair and maintenance charge and the collection, expenditures and administration of the road repair and maintenance charge shall be determined by the Developer or the Board of Directors of the Association, subject to the provisions hereof.
- d) The Developer shall function as the Board of Directors of the Association until such time as the Developer has conveyed Fifty Percent (50%) of the Tracts entitled to membership in the Association as set forth herein. At such time as Developer sells Fifty Percent (50%) of the Tracts, Developer shall cease to function as the Board of Directors of the Association, and at such time the members entitled to vote in the Association shall elect a Board of Directors from within the membership of the Association, in a number not to exceed three (3) nor less than two (2) of the owners of the Tracts entitled to membership. Such Board of Directors shall be elected within sixty (60) days of Developer giving notice by certified mail of Developer's expiration of term as the Board of Directors due to the requisite sale of Tracts. Should the Association fail to elect a Board of Directors to serve, the Developer shall be entitled to select a Board of Directors composed of three (3) members from among the owners of Tracts entitled to membership, who shall serve until such time as the Association duly elects Board of Directors. Members selected by the Developer to serve as the Board of Directors shall not be obligated to serve, and upon indication of refusal to serve being made by such selected member upon Developer, Developer shall select such additional members as necessary who agree to voluntarily serve until the requisite number of three (3) members is reached. Further, in the event Developer is required to select a Board of Directors, Developer is entitled to select itself as one of the requisite three members of the Board of Directors, provided that Developer still owns one or more of the Tracts entitled to membership in the Association as set forth herein.
- e) The Association, at any time after Developer no longer functions as the Board of Directors of the Association, shall have the right at any time, with the majority vote of all Association members, to adjust or alter said road repair to meet the reasonable operation expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 7.07 Creation of Lien and Personal Obligation. In order to secure the payment of the road repair and maintenance charge, and other charges and assessments hereby levied, each member of the Association grants to the Association a contractual lien on the member's Tract which may be foreclosed pursuant to law and in the manner in which the laws of the state of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Association shall be entitled to reasonable attorney's fees, and costs of foreclosure. Following any such foreclosure, each occupant of any such Tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and lawful means, including a judgment for possession in an action of forcible entry and detainer.

In the event of non-payment by such member of any road repair and maintenance charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days' prior notice thereof to such non-paying member, exercise all other rights and remedies available at law or in equity.

Section 7.08 Notice of Lien. In addition to the right of the Association to enforce the road repair and maintenance charge or other charges or assessments levied hereunder, the Association may file a claim or lien against the Tract of the delinquent member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency; (b) the interest thereon; (c) the costs of collection which have accrued thereon; (d) the legal description and street address of the Tract against which the lien is claimed; and (e) the name of the member/owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of said association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the member of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

Section 7.09 Liens Subordinate to Mortgages. The lien described in Section 7.08 shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trust or plan, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Tract affected hereby, and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Tract, who obtains title to such Tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure, shall take title to the Tract free and clear of any claims for unpaid road repair and maintenance charges, or other charges or assessments levied against such Tract which accrued prior to the time such holder acquired title to such Tract. No sale or transfer shall relieve such holder from liability for any road repair and maintenance charge or other liability for any road repair and maintenance charge or other charges or assessments thereafter becoming due, or from the lien thereof. Any other sale or transfer of a Tract affected by the private roads as set forth herein shall not affect the Association's lien for road repair and maintenance charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days' advance written notice of the Association's proposed foreclosure of lien, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent road repair and maintenance charges or other charges or assessments upon which the proposed action is based, provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VII.

Section 7.10 Purpose of the Road Repair and Maintenance Charges. The road repair and maintenance charges levied by the Association through its Board of Directors shall be used exclusively for the purpose of maintaining and repairing the private road to the extent deemed necessary by the Association's Board of Directors. It is understood that the judgment of the Board of Directors of the Association as to the expenditure of such funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 7.11 Handling of Road Repair and Maintenance Charges. The collection and management of the road repair and maintenance charges, or other charges or assessments levied hereunder, shall be performed by the Board of Directors of the Association. The Board of Directors shall maintain separate special accounts for these funds, and members shall be provided at least annual information on the road repair and maintenance fund.

Section 7.12 Developer's Right to Use Private Driveway Easement for Promotion and Marketing of the Property. Developer shall have and hereby reserves the right to reasonable use of the private roads in connection with the promotion and marketing of Tracts affected by the private roads. Further, Developer may permit prospective purchasers of such Tracts, who are not owners or members of the Association, to use the private roads at reasonable times and in reasonable numbers.

Section 7.13 Terrain Management: Cuts and fills created by construction of homes, buildings and driveways must be stabilized within a reasonable time by re-vegetation, erosion matting, straw bales, silt fences, retaining walls, grout or rock landscaping. All runoff water created by construction on any tract must be retained on said Tract. All tract owners are restricted to no more than 800 square feet of manicured or developed grass, which must be of a drought-resistant variety. All tracts (whether improved or unimproved) shall be maintained in good condition and free of any trash and excessive weeds.

Section 7.14 Archaeological Sites: Archaeological sites exist within the boundaries of Vista Rio Bonito subdivision and unmarked human burials might be discovered in course of normal construction activities. Section 18-6-11.2 of the New Mexico Cultural Properties Act prohibits the disturbance of unmarked human burials on all lands in New Mexico, including those found on private land. If human burials are discovered during ground disturbance, all disturbing activity must cease, and local law enforcement, the New Mexico Medical Examiner, and the Historic Preservation Division must be notified. If archaeological artifacts [pottery shards, flaked stone, bone, etc.] are found, the tract owner may want to consult with a professional archaeologist to determine the significance of the site and possible preservation options.

ARTICLE VIII

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 8.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as set forth in this declaration with respect to the Association and the Common Area from the date hereof, until the earlier to occur of (i) The control Transfer Date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The rights and reservations herein after set forth shall be deemed excepted and reserved in each conveyance of a Tract by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservation and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent to any one such amendment shall not be construed as a consent to any other subsequent amendment.

Section 8.02 Right to Construct Additional Improvements in Common Area. Developer shall have and hereby reserves the right (without consent of any other Owner), but shall not be

obligated to construct additional improvements within the common Area at any time and from time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of the Maintenance Charge. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to care for and maintain the same as elsewhere provided in this Declaration.

Section 8.03 Developer's Rights to Use Common Areas in Promotion and Marketing of the Property. Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property. Without limiting the generality of the foregoing, Developer may erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Developer may reasonably deem necessary or proper in connection with the promotion, development and marketing of land within the Property; may use vehicles and equipment within the Common Area for promotional purposes; and may permit prospective purchasers of property within the boundaries of the Property, who are not Owners or Members of the Association, to use the Common Area at reasonable times and in reasonable numbers; and may refer to the services offered by the Association in connection with the development, promotion and marketing of the property.

Section 8.04 Developer's Rights to Grant and create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owners or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easement, cable television systems, communication and security systems, drainage, water and other purposes incidental to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Tracts or other property owned by Developer; (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner of the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision.

Section 8.05 Developer's Rights to Convey Additional Common Area to the Association. Developer shall have and hereby reserves the right, but shall not be obligated to, convey additional real property and improvements thereon, if any, to the Association as Common Area at any time and from time to time in accordance with this Declaration, without the consent of any other owner or the Association.

ARTICLE IX

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 9.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through person to whom the Board of Directors has delegated such powers (and subject to the provisions of the By-Laws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhances the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the association as set forth in this Declaration.

Section 9.02 Duty to Accept the Property and Facilities Transferred by Developer. The Association shall accept title to any property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property

and Functions are not inconsistent with the terms of this Declaration. Property interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property. Any property or interest in property transferred to the Association by Developer shall, except to the extent otherwise specifically approved by resolution of the board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent charge or fee. The property of interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management maintenance, replacement and operation thereof.

Section 9.03 Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the following: establishment, operation and maintenance of a security system, if any, for the subdivision; landscaping maintenance, and management, maintenance, repair and upkeep of the subdivision entrances and other common areas.

Section 9.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 9.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

Section 9.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 9.07 Duty to Provide Annual Review. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 9.08 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 9.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or and interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 9.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated

by the Association.

Section 9.11 Power to Enforce Restrictions and Rules and Regulations. The Association (and any owner with respect only to the remedies described in (ii) or (iii), below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulation; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member or any Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continue; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorney's fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 9.12 Power to Grant Easements. In addition to any blanket easements described in the Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on over or under the Common Area.

ARTICLE X

GENERAL PROVISIONS

Section 10.01 Term. The provisions hereof shall run with all property in Vista Rio Bonito Subdivision and shall be binding upon all Owners and all persons claiming under them for period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than two-thirds (2/3rds) of the Owners (including the Developer) of the Tract has been recorded agreeing to amend or change, in whole or in part, this Declaration.

Section 10.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or by signed ballots voting for such amendment, of not less than two-thirds (2/3rds) of all the Owners (including Developer) of the Subdivision. There shall be one vote per Tract. Anyone owning more than one Tract shall have one vote per Tract owned. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than two-thirds (2/3rds) of all the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facie evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than two-thirds (2/3rds) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Declarant) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. notwithstanding any provision contained in the By-Laws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Lincoln County, New Mexico, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (30) years after the date of filing of the amendment or termination.

Section 10.03 Amendments by the Developer. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights or any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security communications or energy-related devices or equipment which did not exist or where not in common use in residential subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

Section 10.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity of un-enforceability or partial invalidity or partial un-enforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 10.05 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 10.06 Successors and Assigns. The provisions hereof shall be binding upon and

