

180 Acc/cay ①

**DECLARATION OF PROTECTIVE COVENANTS**

**CAVE CREEK SUBDIVISION**

**AT SONOMA RANCH SOUTH SUBDIVISION**

**PHASE I**

**DOÑA ANA COUNTY, NEW MEXICO**

KNOW ALL BY THESE PRESENTS: That Sonoma Ranch Subdivision Ltd., Co., a New Mexico limited liability company, developer and owner of Sonoma Ranch South Subdivision, Cave Creek I, a subdivision in Doña Ana County, New Mexico, according to the plat thereof on file in Plat Records Book 19, pages 322-325, of the County Clerk's office of Doña Ana County, New Mexico, in consideration of the mutual interest of the owners of real estate in Cave Creek I covenants and agrees with all future purchasers of lots or building sites in said Subdivision (and the future owners of lots in other phases of Cave Creek, and future subdivisions created within Sonoma Ranch South Subdivision) that the following restrictions and obligations shall apply to all lots and building sites in said Subdivisions, and all conveyances of any lot therein shall likewise be subject to said restrictions and obligations as follows:

**I**

1) **TERM.** All of the restrictions, conditions, covenants and reservations set forth in the Declaration shall be covenants running with the land and shall continue and remain in full force and effect at all times until January 1, 2025, and shall thereafter be automatically continued without further notice from that time for successive periods of ten (10) years without limitation, unless there shall be recorded a written instrument, approved by the then-record owners of seventy-five percent (75%) of the lots in the subdivisions and executed by the members of the Design Review Committee, modifying or extinguishing this Declaration in whole or in part.

2) **ENFORCEMENT.** All persons, firms, associations, and corporations who now own, or who may in the future own, property in the subdivisions are specifically given the right to enforce these covenants through any proceeding, at law or in equity, against any person or persons, firms and corporations violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation thereof. Neither the Declarant nor the Design Review Committee shall be obligated to enforce any covenant through legal proceedings.

3) **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall not affect any of the other provisions, which at all times shall remain in full force and effect.

4) **DESIGN REVIEW COMMITTEE.**

A. The Design Review Committee shall initially be composed of three persons to be chosen by the Developer. The Developer has the authority to remove any member of the Initial Committee, with or without cause. In the event of death, resignation or removal of any member of the initial committee, the above mentioned Developer shall have full authority to designate a successor or successors. The Design Review Committee may designate one of its members to take any action or to perform any duties for and on behalf of the Committee. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this Covenant. The initial Design Review Committee shall exist until such time as the Developer states in writing to all individual owners of lots in Cave Creek I of Sonoma Ranch Subdivision that control shall pass to whomever the majority of those lot owners shall elect. A majority of the lot owners shall determine the means of the continuation and succession of members of the Design Review Committee after notice has been served. Such notice shall be given at the latest after the conveyance by the Developer of the last lot in Cave Creek I; however, failure to give such notice shall not extend the term of any member of the Committee, nor shall Sonoma Ranch Subdivision Ltd., Co. be liable therefore.

B. In addition to other powers and authority vested in the Design Review Committee, it shall also: rule upon any questions arising with respect to interpretation of the protective covenants; grant variations from these covenants at its discretion, and, if necessary, may, but shall not be required to, take any action necessary to enforce the same on behalf of all parties having an interest. Such shall not preclude any other person authorized by law from either enforcing or enjoining the enforcement of these restrictive covenants.

C. The Design Review Committee shall also serve as a design review committee. The Design Review Committee shall issue standards or rules ("Design Standards") relating to the procedures, materials to be submitted and additional factors which will be taken into consideration in connection with the approval of any proposed improvements to the property.

D. The review of any plans submitted to the Design Review Committee, and any approval thereof, is intended and shall be construed solely as review of compliance with these Protective Covenants, and shall not be deemed or construed in any way to include review and/or approval of compliance with applicable laws, codes or regulations, nor of safety, habitability,

stability or any other matter, all of which are the responsibility solely of the architect, builder and/or owner of the improvements for which plans are submitted.

5) **DESIGN REVIEW.** No building, wall or fence shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure having been approved by the Design Review Committee as to materials and compliance with these covenants. Approval shall be as provided in Paragraph I-6.

6) **PROCEDURE.** Owners shall submit plans and specifications to the Committee, along with forms designated and included in Design Standards. The Committee's approval or disapproval as required in these covenants shall be in writing, and given within ten (10) working days of the submission of all required information. In the event the Design Review Committee fails to act on submitted plans within the 10-working-day review period, then the plans shall be deemed approved.

7) **NON-LIABILITY.** Neither the Developer nor the Design Review Committee shall incur liability to anyone submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval, or disapproval, or failure to approve any such plans; anyone submitting plans for approval, by the submitting of such plans, and by acquiring title to any of the property covered hereby, waives his claim for any such damages.

8) **APPLICABILITY.** The conditions and restrictions imposed herein shall apply to all lots within Cave Creek I, unless variations therefrom are granted by the Design Review Committee as provided herein.

## **II. GENERAL RESTRICTIONS**

1) **R-1 ZONED LOTS.** The following restrictions as to use shall apply to all Single Family Residential lots within the subdivision:

A. Only one single family dwelling on each lot is permitted. No geodesic dome, cubical, or A-frame structures are permitted as residences or for any other purposes. No mobile homes (single wide or double wide), manufactured housing, prefabricated or modular homes are permitted, whether or not they are permanently attached to the land, and whether or not improvements are added to such mobile homes or manufactured housing or modular homes. The temporary sales office of the Developer is not, however, subject to this paragraph.

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

B. No residence shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of less than 1,600 square feet of heated living area, exclusive of garages, open porches, accessory buildings or other covered areas, with the exception of a temporary sales office placed upon a lot by the Developer, which shall remain only until the sale of the last lot in the Sonoma Ranch South Subdivisions.

C. No structure on any lot shall exceed one story above grade with a maximum height of twenty-three (23) feet above the highest finished grade of the lot, except for chimneys of reasonable size. Each dwelling shall have a minimum two car garage, being a minimum size of 400 square feet, and having one 16' by 7' door or two 8' by 7' doors at a minimum.

D. No building or any part thereof, including garages, shall be erected on any lot closer to the respective property line than as follows:

Front setback	20 feet
Side street setback	15 feet
Side yard setback	7 feet
Rear yard setback	25 feet

E. All buildings erected, placed or permitted to remain on any lot shall be situated only within that portion of said lot not restricted from use by an easement or right-of-way. At street intersections, lots having frontage on two (2) streets shall have one (1) street declared by the Design Review Committee, on approval of structural plans, as the street where the "Front setback" applies. The other street shall have a minimum "Side street setback" which shall apply.

F. No variation from the "side yard setback" shall be approved.

G. Should any residence be constructed on more than one lot, the exterior lines of lot ownership shall be used for determining the front, rear and side lot setbacks subject to existing easements.

H. All buildings constructed in the Subdivisions shall be frame and stucco, adobe, rammed earth or other such surfaces and materials as may be authorized by the Design Review Committee. Brick and wood siding are not acceptable surfaces. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage buildings shall be allowed on any lot unless fully shielded and screened from view from any street and any other lot either abutting or otherwise. Only exterior surface materials in desert tone colors (including tones of brown, tan and rose), shall be used for any

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

residence, accessory structure, wall or fence. The construction of each building must comply with the New Mexico Uniform Building Code or the Building Code enforced by the City of Las Cruces.

I. No identical front elevations will be allowed side by side or directly across the street from another. Exterior elevations need to wrap around the house on four sides on all lots that back up to the golf course. Recommended styles for exterior elevations are New Mexico Traditional, New Mexico Contemporary, Spanish Colonial/Mission, or Las Cruces Traditional. Examples of these are included in the Design Guidelines.

J. A grading plan showing finished elevations in the retention or detention areas has been approved by the City of Las Cruces. No grading, land filling, excavating, or other alterations will be done in the retention or detention areas except pursuant to the approved plan or revision approved by the City of Las Cruces and by the Design Review Committee.

K. No manufacturing or commercial enterprise of any kind for profit shall be maintained on, in front of, or in connection with single family residential lots in the subdivision; except home occupations or professionals in businesses engaged in recognized non-manufacturing professions may be permitted which would be in accordance with the codes of the City of Las Cruces.

L. There shall be no fair, exhibition, festival, show or other activity which attracts or is intended to attract, divert, or collect a large number of persons. Such restrictions shall not prevent, however, what is commonly known as "garage sales" or backyard parties conducted by residents or their children living in the subdivision, provided such are only occasional. Open houses for the purpose of selling a home and model home shows for the same purpose may be held.

M. No animals, livestock, including horses, donkeys, and mules, or poultry or swine of any kind shall be raised, bred, or kept on any lot. Dogs, cats or other domesticated, household pets may be kept; provided, however, that they are not kept, bred or maintained for any commercial purpose, and further provided they do not disturb other property owners or become a nuisance in any way.

N. Use and occupancy of all portions of the Subdivision shall be subject to zoning, building, health, sewage disposal and sanitation laws and regulations and all other applicable laws and regulations of the State of New Mexico and/or all government agencies having jurisdiction; the Declarants, its successors or assigns, may also impose rules and covenants regulating such matters from time-to-time.

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

O. Subdivision lots shall not be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any portion of the Subdivisions or within 500 feet below the surface of the Subdivisions.

P. Each lot owner shall be responsible for removing weeds and other debris located on such Owner's lot and for maintaining, repairing and replacing in a good state of repair and in a neat and attractive condition all other improvements to Owner's lot.

**2) MUTLI-FAMILY, PROFESSIONAL, AND COMMERCIAL LOTS.** All multi-family, professional, and commercial lots shall adhere to the applicable Design Standards and shall follow all Protective Covenants with the exception of the following restrictions:

II: A, B, C, D, G, I, and L.

**3) TEMPORARY USES.**

A. Any lot or portion thereof may be used temporarily by the Developer as a sales office, model home complex, or storage and construction yard during the construction and sales period, provided that all temporary uses defined herein must have the prior written approval of the Design Review Committee.

B. No lot shall be used for the storage of any construction or other materials except for a period of up to thirty (30) days prior to the start of construction and during the construction period.

**4) CONSTRUCTION.**

A. **R-1 ZONED LOTS.** All construction, whether new construction, alterations, additions or exterior remodeling, shall be completed in accordance with plans approved by the Design Review Committee within six (6) months from commencement of construction. All construction shall commence upon each lot within eighteen (18) months from the date of purchase of said lot from the Developer or at the Developer's option, the Developer may re-purchase the lot at the original purchase price. The Developer must exercise this option within 30 days from the 18-month date or it shall loose the right to exercise this option.

B. **R-1 ZONED LOTS.** No building previously used at another location nor any building or structure originally constructed as a mobile dwelling, except when used as a temporary

sales office, may be moved onto a lot, except as expressly approved by the Design Review Committee.

5) **LANDSCAPING.**

Landscaping is required on all lots.

A. R-1 ZONED LOTS. Typical desert environment and drought resistant landscaping is encouraged. However, a sufficiently visible amount of foliage must be present on each building lot to comply with the landscaping requirements herein established or subsequently amended. The Design Review Committee shall be the final authority as to acceptability and the following criteria shall be used as a guideline for the required landscaping:

1. One (1) two inch (2") caliper broadleaf tree which when mature will reach a minimum height of 20 feet. (Two required if the side yard abuts a street.) Should a second tree be required by FHA or other Governmental regulation, such tree can be a 1" caliper broadleaf, unless it is in the side yard tree on an abutting street, then it must be as required above. Examples are: seedless locust, ash, red leaf maple, and similar varieties.

2. One (1) intermediate size shrub-brush planting which, when mature will reach a minimum height and width of 8 feet. (Two required if the side yard abuts a street.) Examples are Photinia, Texas sage, oleander, India Hawthorne, pyracantha, forsythia, spirea, sumac, and similar varieties.

3. Six (6) lower foundation plantings which when mature will reach a height of 2 - 3 feet (eight required if the side yard abuts a street). Examples are: Most of the above shrubs, plus nandina, rosemary, mock orange, tam junipers and similar varieties, however, no more than 2 of the above required 5 plantings shall be a juniper variety.

4. An assortment of other hardy, drought-resistant broad leaf plantings, including cacti, yucca, cholla, agave, century plant, ocotillo and similar plantings are acceptable and encouraged in addition to or instead of the above required plantings.

5. Ground cover vegetations are encouraged on at least a portion of the front yard (and side yard when it abuts a street). Examples are: seedless Bermuda, blue gramma, fescue, and similar hardy grasses. If such organic ground cover covers less than twenty percent (20%) of the non-driveway area of the landscaped area, then the number of intermediate shrubs and foundation plantings must be increased by one hundred percent (100%) each in number. Inorganic material shall be used to cover those areas of the front yard not planted or covered

otherwise. In no event is the natural sandy surface to be left exposed and un-landscaped. Examples are: crushed rock, crusher fines, brick, crushed brick, paving stone, and similar materials. A minimum of 6 mm. black plastic shall be used under any inorganic material in the front and side yards. The landscaping material shall cover the plastic in such quantity that the underlying plastic shall not show through the surface material.

6. Any variation in use or placement of materials as prescribed above must first be approved by the Design Review Committee.

B. Mutli-family, professional, and commercial buildings must meet the requirements of the codes of the City of Las Cruces, at a minimum, and the plans for landscaping are subject to approval of the Design Review Committee.

C. At any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the Committee must approve such substantial change, modification or alteration. Excluded shall be the instance where plants, trees, shrubbery or other landscaping materials may die, be destroyed, removed or similarly caused to be reduced in quantity and as such require replanting or replacement according to the same rules as apply to the initial planting requirements set forth above.

#### 6) FENCING AND WALLS.

A. Any fence, wall, building or structure placed on the lot shall be in compliance with the set back and zoning requirements of the City of Las Cruces, and shall not impair the drainage function of the ponding areas, as shown on the plat. All perimeter and/or retaining walls and fences shall be placed on the dividing lines between lots, except that all lots that are immediately adjacent to and bounded by land not in the Sonoma Ranch South Subdivisions shall have walls or fences along said perimeter lines completely within the perimeter lot lines, and said perimeter wall shall not be party walls. All walls or fences adjoining the golf course property must be built within the perimeter lot line of said lots. Retaining walls shall be party walls if placed on the common property line between two (2) lots, and shall not be removed by either property owner without the written consent of the other party and the Design Review Committee.

All R-1 zoned lots are required to have perimeter walls or fences constructed. Such required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line, and along the rear lot line in its entirety. Other walls and fences are optional. The party walls shall be a minimum of forty-two (42) inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than six (6) feet in height.



CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

B. All fences, perimeter walls, and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with what is known as "Las Cruces Rock Walls" standards, materials and styles, and shall be of a yellow, reddish or tan color, rather than gray in color. However, those walls, forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material used in the residence construction.

C. Decorative wrought iron may be used for wall accents, gates and such, subject to Design Review Committee approval.

D. Tin or other sheet metal, chain link, wire and barbed wire are specifically prohibited, except wire fences may be constructed for dog runs when located within and enclosed by a permitted exterior fence. The fence height for such runs shall be a maximum of one (1) foot taller in height than the exterior fence.

E. Perimeter fences shall be six (6) feet in height or less, when measured directly from the highest adjacent ground surface, and may be erected on that portion of a lot situated to the rear of the front wall of the main building.

F. Fences which are adjacent to the golf course may not permit direct access by means of gates or openings.

**7) TRAILERS, CAMPERS, AND RECREATIONAL VEHICLES.**

Boats, campers, other trailers, recreational and similar vehicles or equipment shall be located only to the rear of the closest front wall of the residence dwelling, and parked inside a walled, fenced area being a minimum of six (6) feet tall and serving as a screened area.

**8) GARBAGE AND TRASH.**

No refuse, garbage, trash, collection container, lumber, grass, shrub or tree clippings, plant waste, compost, metal, bulk materials, scrap, junk cars, paint cans, oil, flammable objects, concrete tailings, rock wall residue, refuse or debris of any kind shall be kept, stored or allowed to accumulate on any lot except within an enclosed structure or area appropriately screened from view. Rubbish and garbage must be kept in suitable containers provided by the City of Las Cruces and removed from lots by such in accordance with ordinances, rules and regulations of the City of Las Cruces, and all regulations promulgated thereunder. No rubbish or garbage may be burned or dumped on lots or elsewhere in the subdivision.

**9) ANTENNAE, EQUIPMENT, PIPES, UTILITY LINES, AND TRANSMITTERS.**

A. Pipes for water, gas, sewer, drainage, or other purposes, and wires, poles, aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities, such as solar equipment, shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure and shall not be visible from the street. Any items that can not meet these requirements shall be subject to the approval of the Design Review Committee. No transmission towers, or microwave equipment shall be erected or placed on the property.

B. Evaporative or refrigerated air cooler(s), if erected or maintained on the roof of any premises, shall be effectively screened or otherwise hidden from view from any public place or adjoining lot as determined by the Design Review Committee.

**10) SIGNS.**

A. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any residential lot or on any building erected thereon, other than one (1) name plate of the occupant of any residence upon which his or her professional or occupational title may also be added, and provided no such sign or name plate shall exceed a size of one square foot, and no such sign shall be lighted. Provided, however, that permission is granted for the erection and maintenance of not more than one signboard to each building site during the course of construction of a new single-family dwelling and upon its completion, during the course of its initial sale, or resale, which signboard shall not exceed forty-eight (48) square feet. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Developer from erecting, placing, or maintaining sign structures and offices as may be determined necessary by the Developer to promote sale and development of lots or properties within the subdivision.

B. Multi-family, professional, and commercial buildings must meet the codes of the City of Las Cruces.

**11) SITE TRIANGLE AT INTERSECTIONS.**

There is required an area of unobstructed vision at street intersections, entrances/exits, which permits a vehicle driver to see approaching vehicles to the right or left. Nothing over three (3) feet in height measured from the street at the point where the pavement meets the curb-stone, shall be permitted to obstruct a sight line which shall be the front street and side street lines of a

corner lot and a line connecting points thirty (30) feet distance from the intersection of the property line of such lot.

Trees located within the clear sight triangle will be allowed if all branches are trimmed from a height between three (3) feet and eight (8) feet.

No single post or column within the designated triangle shall exceed twelve (12) inches in thickness at its greatest cross-section dimension.

### **III. EASEMENTS, STORM DRAINAGE AND SUPPORT STRUCTURES**

#### **1) EASEMENTS.**

A. Utility easements and rights-of-way designated on the plat of the Subdivisions, as amended from time-to-time, are hereby reserved unto the Declarant, and the City of Las Cruces and all public and private utility companies (as specifically shown as such plat or assigned by the Declarant) for the construction, installation and maintenance of any and all utilities, such as power, cable, gas lines, drains, roads, water supply lines, telephone and telegraph lines or the like, necessary or desirable for public health, welfare and convenience.

B. Within these easements no structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or streets. Within each drainage easement, no temporary or permanent structure shall be placed, and no structure, or planting or movement of materials shall be permitted which may interfere with the direction of flow in the drainage channels in the easements, unless approval is first obtained from the City of Las Cruces and then once again by the Design Review Committee.

C. All easements shall be kept free from alteration, and owners of lots containing such easements shall keep them free from permanent structures and shall provide access without trespass by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities which may be constructed within those easements.

D. Each R-1 zoned lot in the subdivision has an area designated on the Plat that is a ponding area. Each lot owner is responsible for retaining water on that owner's lot as called for on the Plat. The swale, slope or indentation which acts as the ponding area may not be altered unless consent is obtained from the City of Las Cruces and then again by the Design Review Committee.

E. Sale of any lot shall include all rights of Declarant in and to the street, road or highway affronting the same, subject however to the rights of all others to use the same as public or private thoroughfares. Declarant reserves the right to dedicate to the public all streets, roads and highways within or abutting the Subdivisions without the consent of any owner within the Subdivisions.

F. All public and private rights-of-way, including streets and roads dedicated the City of Las Cruces, shall also be considered a utility easement. Such easements shall be measured by a perpendicular (or radial on curves) from the front property corners of all lots to the centerline of such street or road.

#### IV. MISCELLANEOUS PROVISIONS

1) Each grantee of a lot within Cave Creek I by the acceptance of a deed or conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall ensure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

2) Any provision hereof may be changed, amended or rescinded by written instrument setting forth such amendment which has been approved by the Developer, or by owners of ninety (90) percent of the lots, and executed by the members of the Design Review Committee.

3) The agent for service of process upon the Developer is David M. Steinborn, 250 South Downtown Mall, Las Cruces, NM, 88001.

4) Any amendment, change, modification or rescission of this Declaration shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescission of any provision of this Declaration shall be valid or effective if such amendment, change, modification or rescission violates or conflicts with any applicable statute of New Mexico.

5) Declarant shall have, retain, and reserve certain rights until the last lot within the subdivision has been sold and conveyed.

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

6) Each grantee of a lot within the Subdivisions is hereby placed on notice of the plans of the Developer to develop other lands, including other units or phases of Sonoma Ranch South Subdivision, and other adjacent subdivisions, in the City limits of Las Cruces, having minimum lot sizes as required under districts zoned or classified R-1 by the City of Las Cruces zoning code and regulations and containing certain multi-family, and commercial lots. Each grantee accepting a grant of a lot, subject to these Protective Covenants, hereby consents to such development and covenants not to oppose such development, provided such development is not in violation of law.

7) Each grantee of a lot within the Subdivision acknowledges that, as other subdivisions are developed within Sonoma Ranch South Subdivision, that the lot owners within said subdivisions shall become "lot owners" and members of the Sonoma Ranch South Subdivisions Owners Association, Inc., defined as described in Section V of these Protective Covenants.

**V. OWNERS' ASSOCIATION**

The Sonoma Ranch South Subdivision Owners Association, Inc., which is an incorporated association made up of all the lot owners in the Sonoma Ranch South Subdivision, has as its purpose the ownership, development, and maintenance of common areas and facilities within the subdivision.

**1) DEFINITIONS.**

For the purposes of this Declaration, the following terms are defined:

ASSOCIATION: All of the lot owners acting as a group in accordance with the By- Laws adopted by them and this Declaration.

MAINTENANCE AREAS: The maintenance areas includes the "adopted" median on Roadrunner Parkway, the medians on Golf Club Road, and the land area along Golf Club Road between the road pavement and the sidewalks, the entry monument, the landscaping from the entry monument to the entry bridge, and the wrought iron railings on the bridges.

LOT OWNERS: Person(s) owning a lot within Sonoma Ranch South Subdivision in fee simple.

**2) NON-PROFIT PURPOSE.**

No director, officer, member or employee of the Owners' Association, or any other private individual shall receive at any time any of the earnings or funds of the Owners' Association; provided that this shall not prevent payment to any such person of reasonable compensation for services rendered, and no such person shall be entitled to share in the distribution of any of the Owners' Association assets upon the dissolution of the Owners' Association. At dissolution, excess assessments may be funded to the lot owners, and all other assets shall be transferred exclusively to charitable, religious, scientific, or educational institutions which would then qualify under the provisions of Section 501 (c)(3) of the Internal Revenue Code as it now exists, or as amended hereafter.

**3) ADMINISTRATION OF THE MAINTENANCE AREAS.**

The areas to be maintained shall be administered as follows:

**A. LOT OWNERS AND BOARD OF DIRECTORS:** The administration of the maintenance shall be vested in the lot owners, the owners of each lot having one vote. The owners shall elect and act through a Board of Directors (hereinafter called the "Board") in the manner set forth in the By-Laws attached hereto. Each member of the Board shall be a lot owner except that if a lot owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of such corporation, partner of such partnership, individual trustee of such trust, or manager of such other legal entity shall be eligible to serve as a member of the Board.

**B. INITIAL BOARD OF DIRECTORS:** The initial Board of Directors shall be composed of three persons to be chosen by the members of Sonoma Ranch South Subdivision Ltd., Co. The Board of Directors shall consist of the above members until either (a) the General Partners state in writing to all lot owners that control shall pass to a Board of Directors elected by the lot owners, or (b) the sale of all lots in the subdivisions.

**C. GENERAL POWERS AND DUTIES OF THE BOARD:** The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the maintenance areas in accordance with the provisions of this Declaration and said By-Laws and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for the following:

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

1. Water, waste removal, electricity and other necessary utility services for the maintenance areas. The manner in which utility services will be metered and charged may be determined by the Board of Directors.

2. A policy or policies in amounts determined by the Board, insuring the members of the Board and their agents and employees and the owners against any liability to the public or to the owners and their invitees and tenants.

3. Landscaping, gardening, snow removal, painting, clearing, maintenance, decorating, repair and replacement of the maintenance areas and facilities and the Board shall have the exclusive right and duty to acquire the same.

4. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments, water, electricity, and other utility services for the areas and facilities which the Board is required to secure or pay for pursuant to the terms of this Declaration or By-Law or which, in the Board's opinion, are necessary or convenient for the benefit of the lot owners or for the enforcement of this Declaration and/or the By-Laws attached hereto.

5. Any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the maintenance areas or any part thereof. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of such lien or liens shall be specially assessed to said owners, including attorneys fees.

6. The services of any person or firm employed by the Board in furtherance of its general powers and duties herein stated, including but not limited to, accountants, bookkeepers, tax advisors, lawyers, architects, engineers, carpenters, electricians, plumbers, painters, gardeners and others determined by the Board to be necessary or convenient.

7. Any income taxes payable by the Association.

**D. LIMITATION OF THE POWERS OF THE BOARD:** The Board's powers herein above enumerated shall be limited in that the Board shall have no authority to acquire and pay for any capital addition or improvement (other than for purposes of replacing or restoring portions of the maintenance areas, subject to all of the provisions of this Declaration) having a total cost in excess of \$2,000.00; nor shall the Board authorize any structural alterations, capital additions to, or capital improvements requiring an expenditure in excess of \$2,000.00, without in each case obtaining the prior approval of seventy-five (75%) of the lot owners. The Board may adopt such

reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the maintenance areas and for the health, comfort, safety and general welfare of the owners. Written notice of such rules and regulations shall be given to all owners and the areas shall be at all times maintained subject to such rules and regulations.

**4) ASSESSMENTS AND MAINTENANCE FUND**

There shall be a maintenance fund and assessments against the lot owners as follows:

**A. CREATION OF MAINTENANCE FUND AND OBLIGATION FOR ASSESSMENTS:**

The Board shall establish a maintenance fund for the administration, maintenance, repair, replacement and improvement of the maintenance areas and facilities and for the enforcement of the provisions of this Declaration, and the declarations of other future subdivisions within Sonoma Ranch South Subdivision, and the By-Laws, attached hereto, which maintenance fund shall be financed or funded by assessments as herein provided, paid by all owners. Each future owner, including transferees of future owners, shall, at the time he/she takes title to his lot, pay into the maintenance fund a sum of money determined by the Board to be adequate to pay the share of the maintenance fund of such future owner or transferee until the next regular annual assessment for the maintenance fund made against all owners, and if the Board fails to determine the amount of such sum, the amount shall be \$125.00. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31<sup>st</sup> of each year.

Each year, on or before November 30<sup>th</sup>, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies, which will be required for the administration, tax and insurance payments, maintenance, repairs replacement and improvement of the maintenance areas during the ensuing fiscal year, for the exercise and performance of the owners and duties of the Board and for the enforcement of the provisions of this Declaration and the By-Laws attached hereto, together with a reasonable amount considered by the Board to be necessary as a reserve for contingencies and replacements and shall notify each owner as to the amount of such estimate.

On or before January 2<sup>nd</sup> of each year, each owner shall be obligated to pay to the Board, all of the assessments made pursuant to this paragraph, unless other payment arrangements are made with approval of the Board.

**B. MANAGEMENT OF THE MAINTENANCE FUND AND COLLECTION OF THE ASSESSMENTS:** On or before the date of each annual meeting of the owners, the Board shall supply to each owner an itemized accounting of the administrative, maintenance and other expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the



CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the amount due from the owners next year's estimate, until exhausted, and any net shortage shall be added to the next year's estimate after rendering of the accounting. The Board shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any owner's assessment, the Board may serve notice of such further assessment on all owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective with the next payment.

All owners shall be obligated to pay the adjusted annual amount. The initial Board shall determine the "estimated cash requirement" as above defined. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the owners shall not constitute a waiver or release in any manner of such owner's obligation to pay the maintenance costs and necessary reserves. The Board shall keep full and correct detailed books of account and records of the receipts and expenditures affecting the common areas, specifying and itemizing the maintenance and repair expenses of the common areas and any other expenses incurred. The records and the vouchers authorizing the payments shall be available to inspection by any owner or any representative of any owner at reasonable times. All funds collected hereunder shall be held and expended for the purposes designated herein and shall be deemed to be held for the benefit, use and account of all the owners.

If an owner is in default in the annual payment of the aforesaid charges or assessments for thirty days or longer, the members of the Board may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided and there shall be added to the amount due the costs of such suit, together with legal interest and reasonable attorney's fees to be fixed by the court. To the extent permitted by any court decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments and interest, costs and fees, as above provided, shall be and become a lien or charge against the lot owned by the lot owner involved when payable and may be foreclosed by an action brought in the name of the Board as foreclosure of mortgage against real estate, and the period allowed for redemption shall be one month from and after the date of foreclosure suit. Said lien shall take effect and be in force, provided, however, that encumbrances owned or held by any bank, insurance company or savings and loan association shall be subject as to priority, after written notice to said encumbrances of unpaid maintenance expenses, only to the lien of all common expenses on the encumbered lot which become due and payable subsequent to the date said encumbrances either takes possession of the lot, accepts a

conveyance of any interest therein, or files suit to foreclose his/her lien. In the event of a voluntary conveyance of ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said ownership to the time of such grant or conveyance. Amendments to this paragraph shall only be effective upon unanimous written consent of the owners and their mortgagees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the maintenance areas or by abandonment of his/her lot.

**5) INSURANCE AND TAXES.**

The Board of Directors shall purchase such liability or casualty insurance as it deems advisable. The Board shall file the association's annual tax return, and annual election as a tax exempt homeowners association, if applicable; and shall pay property taxes and special assessments which are or could become a lien upon the maintenance areas.

**6) GENERAL PROVISIONS.**

The following general provisions shall govern the administration and management of the maintenance areas:

A. Until the Board of Directors provided for in this Declaration is formed, the Developer shall exercise the powers, rights and functions of the Board.

B. Upon written request to the Board, the holder of any duly recorded mortgage or deed of trust against any lot owner shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or lot owners whose ownership is subject to such mortgage or deed of trust.

C. Notices required to be given to said board or the owners may be delivered to any member of the Board either personally or by mail addressed to such Board member at his home.

D. Notices required to be given any devisees or personal representative of a deceased owner may be delivered either personally or by mail to such personal representative at his/her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered.

E. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges,

CAVE CREEK I DECLARATION OF PROTECTIVE COVENANTS

and the jurisdiction, rights and owners created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all obligations hereby imposed shall be covenants running with the land and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

F. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

G. The agent for service of process upon the Owners' Association is David M. Steinborn, 250 South Downtown Mall, Las Cruces, New Mexico 88001, until such time as the President of the Association is elected.

H. Any amendment, change, modification or rescision of this Declaration or the By-Laws hereto attached shall be effective only when filed for the record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescision of any provision of this Declaration or the By-Laws hereto attached shall be valid or effective if such amendment, change modification or rescision violates or conflicts with any applicable statute of New Mexico.

**7) BREACH OF COVENANTS.**

It is further stipulated that breach of any of the foregoing conditions and covenants shall not affect any mortgage or other lien which in good faith may be existing at the time upon said property or any improvements thereon.

**8) AMENDMENT.**

Any provision hereof may be changed, amended or rescinded by a written instrument setting forth such amendment which has been approved by ninety (90) percent of lot owners in attendance or by proxy at a called meeting for that purpose, and executed by the chairman of the Board, except that this provision (V, paragraph 9) may be changed only by unanimous vote of the lot owners.

**9) NO REVERSION OF TITLE.**

Nothing contained in this Declaration or in any form of deed which may be used by the Declarant or its successors and assigns in selling any lot shall be deemed to vest or reserve in Declarant or the owners association any right of reversion for breach or violation hereof, and any such reversionary right is hereby expressly waived by Declarant.

**VI. DEFINITION**

The term "Declarant," as used herein, means Sonoma Ranch Subdivision, Ltd., Co., a New Mexico limited liability company, and its successors or assigns as Developer of the Subdivision. Any such successor or assign intended to become the "Declarant" hereunder shall be designated as such in the instrument of conveyance from the then-Declarant to such successor or assign.

**VII. EFFECTIVE DATE**

These restrictions, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Doña Ana County, New Mexico.

DATED at Las Cruces, New Mexico, this 28 day of September, 1999.

**SONOMA RANCH SOUTH SUBDIVISION LTD., CO.**

By David M. Steinborn  
David M. Steinborn, Member

George B. Rawson  
George B. Rawson, Member

Dale A. Schueller  
Dale A. Schueller, Member

