

AMENDMENT AND RESTATEMENT  
of  
DECLARATION OF CONDOMINIUM  
of  
LAS CASITAS CONDOMINIUMS, INC.

Amendment and Restatement. This Amendment and Restatement of the Declaration of Condominium of Las Casitas Condominiums, Inc. and all amendments thereof of Las Casitas Condominiums, Inc. now of record, so that it is no longer necessary to refer to any of them, but this Amendment and Restatement of such Declaration of Condominium shall control, and shall be effective from the recording hereof in the office of the County Clerk of Dona Ana County, New Mexico.

THIS DECLARATION OF CONDOMINIUM is made and recorded pursuant to the Condominium Act of New Mexico (Sections 70-4-1 through 70-4-27, New Mexico Statutes Annotated, 1953 Compilation as amended by the New Mexico Building Unit Ownership Act (47-7-1 through 47-7-28, N.M.S.A. 1978) by LA MISSION DEVELOPMENT CO., a New Mexico corporation, having its principal office at 225 W. Idaho, Las Cruces, New Mexico, hereinafter called "Developer", and the Las Casitas Condominium Association which directs and administers the Condominium in accordance with the Bylaws attached hereto, whose address is 40 Las Casitas, Las Cruces, New Mexico 88005, hereinafter called "Association"; WITNESSETH that:

WHEREAS, the Developer was the owner, in fee simple, free and clear of liens and encumbrances, of the following described real estate in Dona Ana County, New Mexico.

A tract of land situated about three miles west of Las Cruces, Dona Ana County, New Mexico in the southeast portion of tract 2 of the Mesilla Civil Colony Grant in T.23S., R.1E, N.M.P.M. of the U.S.C.L.O surveys and more particularly described as follows, to WIT:

Beginning at a concrete monument at a point on the north line of Picacho Hills West (a 100 foot wide County Road) for the southeast corner of the tract herein described. Having New Mexico State Plane Coordinates X-310, 627.74 feet and Y-476, 949.86 feet, whence a concrete monument at the southeast corner of the Mesilla Civil Colony Grant Tract No. 2 bears S. 67°25'45"E., a distance of 3074.70 feet; thence from the place of beginning following Picacho Hills West around the arc of a curve to the left having a radius of 579.46 feet, an arc length of 182.11 feet, through a central angle of 18°06'20" and whose long chord bears

Restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such restrictions violate 42 USC 3604(G)

central angle of  $18^{\circ}06'20''$  and whose long chord bears  $N.42^{\circ}39'01''W.$ , 182.35 feet to the southwest corner of the tract; thence leaving Picacho Hills West  $N.40^{\circ}16'30''E.$ , 81.98 feet to a point of curvature; thence around the arc of a curve to the right having a radius of 62.00 feet, an arc length of 32.17 feet, through a central angle of  $29^{\circ}43'30''$  and whose long chord bears  $N.55^{\circ}08'15''E.$ , 31.81 feet to a point of tangency; thence  $N.70^{\circ}00'00''E.$ , 29.29 feet to a point of curvature; thence around the arc of a curve to the left having a radius of 31.00 feet, an arc length of 21.46 feet, through a central angle of  $39^{\circ}37'45''$  and whose long chord bears  $N.50^{\circ}11'08''E.$ , 21.02 feet to a point of tangency; thence  $N.30^{\circ}22'15''E.$ , 238.75 feet to an angle point; thence  $N.59^{\circ}37'45''W.$ , 16.93 feet to an angle point; thence  $N.30^{\circ}22'15''E.$ , 97.00 feet to a point on the northerly line of a 6.0643 acre tract for the northwest corner of this tract; thence  $S.59^{\circ}37'45''E.$ , 160.81 feet to an angle point; thence  $S.68^{\circ}42'20''E.$ , 272.61 feet to a concrete monument for the northeast corner of the 6.0643 acre tract and the northwest corner of this tract; thence  $S.41^{\circ}27'30''W.$ , 297.55 feet to an iron rod at an angle point; thence  $S.70^{\circ}42'45''W.$ , 357.23 feet to the place beginning, containing 3.8701 acres of land more or less. Description by B & M Surveys, Inc. October 1980.

WHEREAS, the Developer has constructed on said real estate five unit buildings with associated accessory structures as follows: Building 1 contains seven units numbered 1, 2, 3, 4, 5, 6 and 7; Building 2 contains five units numbered 8, 9, 10, 11 and 12; Building 3 contains seven units numbered 13, 14, 15, 16, 17, 18 and 19; Building 4 contains twelve units numbered 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31; Building 5 contains eight units numbered 32, 33, 34, 35, 36, 37, 38, and 39, all as shown on the Plot Plan filed herewith and marked Exhibit A for identification. In addition the Developer has constructed on said real estate a swimming pool with associated accessory structures.

WHEREAS, the Developer has submitted said real estate and said improvements to be constructed thereon to the Condominium form of ownership and use in the manner provided by the Condominium Act of New Mexico, hereinafter called the "Act,";

NOW THEREFORE, the Developer hereby declares on behalf of itself, its successors, grantees and assigns to its grantees and their respective heirs, successors and assigns as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature whatsoever in and any lien upon said real estate and improvements thereon, hereinafter called "the Property" or any part thereof, as follows:

1. Submission to Act: The Developer and Association hereby submit the Property to the Condominium Act of New Mexico as it now exists and may hereafter be amended and the Developer hereby publishes and declares that all of the Property is and shall be held owned, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the Act as amended from time to time and subject to the rights, easements, privileges, covenants, and restrictions hereinafter set forth, all of which shall run with the land and shall be a burden and benefit to the Developer and its successors and assigns and any person acquiring or owning any interest in the Property and their grantees, successors assigns, heirs, executors, administrators and other successors in interest.

2. Definitions: For the purposes of this Declaration the following terms are defined as follows:

Unit means a part of the Property intended for residential use, including one (1) or more rooms or enclosed spaces located on one (1) or more floors in a building, and with exits to a street and to a limited common area leading to a street.

Unit owner means the person or persons owning a unit in fee simple absolute and an undivided interest in the fee simple or leasehold estate of the common areas and facilities in the percentage specified and established in this Declaration.

Unit number means the symbol designated the unit in this Declaration.

Association means all of the unit owners acting as a group in accordance with the Bylaws adopted by them and this Declaration.

General common areas and facilities means the swimming pool, the land designated as "general common areas" shown in Exhibit A filed herewith and the foundations, exterior main walls, the roofs of the unit buildings, easements, the rock walls inside and around the perimeter of the Property, and the common roadways accessways, roadways (streets) and parking areas, and otherwise as provided by law, except limited common areas and facilities as defined below.

Limited common areas and facilities means areas which have limited access and includes backyards and side yards which are behind walls and/or gates and the land under the units as shown in Exhibit A.

Common expenses means charges against the Property as a whole and expenses declared to be common expenses by this Declaration including expenses of administration,

maintenance, repair or replacement of the common areas and facilities and all sums lawfully assessed against unit owners by the Association and expenses declared to be common expenses by the Association.

Occupant means a person or persons legally residing in a unit.

Declaration means this instrument, together with its lawful amendments and addendums.

Majority means the majority of votes cast by unit owners.

Property means the land, buildings, improvements and structures owned in fee simple absolute, all easements, servitudes, rights and appurtenances belonging thereto and all chattels intended for the mutual use, benefit and enjoyment of the unit owners in connection herewith.

Special expenses means charges against a particular unit owner for expenses of administration, maintenance, operation and other services attributable to the particular unit owned by such unit owner and for his special benefit as distinguished from the general benefit of the Property as a whole or the common areas and facilities.

3. Description of Buildings, Units, Common Areas and Facilities, and Easements: The buildings, units, common areas and facilities, and easements are as follows:

a) Description of Buildings: There are five buildings designated 1, 2, 3, 4 and 5, all of which will be frame stucco one or two story buildings with no basements, concrete foundations, concrete floors, and principally dry wall interior walls.

Each unit has a floor plan of type B-3, B-4, B-5, B-6 or B-7 as customized. Each unit contains a living room, a kitchen, one or more bedrooms, one or more bathrooms, a garage, closets and other rooms. The types of units are shown on the floor plans filed herewith. The building number and unit type are shown for each unit in Exhibit A.

b) Description and Value of the Units and Property: Each of the units is numbered and designated as set forth on the attached Exhibit A. The buildings and the units each contain are set out as to the dimension and location with respect to the boundary of the land submitted by this Declaration, the location with respect to the other units, the designation or unit number by which the unit shall be described, the approximate number of square feet contained in each

unit, and the value of each unit, are all set out on the diagrams attached to and made a part of this Declaration as Exhibit B. The value of the property is \$ 3,358,305.00.

Nothing herein contained shall be construed to obligate the Developer or any subsequent owner of any unit to sell any of said units for the values above.

c) Description of Common Areas and Facilities: The common areas and facilities are the swimming pool, roads and real estate designated as "general common area" on the Plot Plans. Exhibit A and Exhibit B filed herewith, the foundations, exterior walls and roofs of the unit buildings, the common grounds, driveways, parking areas, walks and walkways, and the chattels and supplies used for the maintenance of the common areas and facilities. Easements for utility purposes are reserved over all of the real estate designated as "general common area" on the Plot Plans, Exhibit A and Exhibit B filed herewith.

d) Ownership of Units: Each building unit owner shall own his building unit as shown on the Plot Plans, Exhibit A and B filed herewith, in fee simple absolute. Each unit consists of the space enclosed or bounded by the exterior boundaries shown on the Plot Plans, Exhibit A and Exhibit B filed herewith, except the common areas and facilities within such areas as herein defined. No unit owner shall by Deed, Plat or otherwise subdivide or in any manner cause his unit to be separated into any tracts, parcels, rooms, or areas smaller than the whole unit as shown on the Plot Plans, Exhibit A and Exhibit B filed herewith. No unit owner shall own any pipes, wires, conduits, public utility lines or structural components running through his unit and serving more than his unit, except as a tenant in common with all other unit owners.

e) Ownership of Common Areas and Facilities: Each unit owner shall own, for all purposes, including voting, an undivided interest in the common areas and facilities expressed as a percentage, 2.56%.

Each unit owner shall own his undivided interest in the common areas and facilities as a tenant in common with all other unit owners and, except as otherwise limited in this Declaration, shall have the right to use the common areas and facilities for all purposes incident to the use and occupancy of his unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and shall run with each unit. The undivided interest of each unit owner in the common

areas and facilities shall remain constant, and may not be altered or changed without the unanimous consent and approval of all unit owners, which consent and approval shall be expressed in an amendment to this Declaration complying in all respects with the Act.

f) No Severance or Partition of Common Areas and Facilities or of Ownership Thereof: The common areas and facilities and the undivided interest of each unit owner in the common areas and facilities shall not be severed or separated from the unit to which they are appurtenant. No unit owner shall execute any deed, lease, mortgage, or other instrument affecting title to his unit or his unit ownership, unless he includes therein both his title or interest in the unit and his corresponding fraction or percentage title or interest in the common areas and facilities appurtenant thereto. Any such deed, lease, mortgage or other instrument purporting to affect the one without including also the other shall nevertheless convey, encumber, or affect the title or interest so omitted, even though the interest is not expressly mentioned or described. The common areas and facilities shall remain undivided among the unit owners. There shall be no partition of the common areas and facilities through judicial proceedings or otherwise until this Declaration is terminated and the Property is removed from the provisions of the Act according to law.

4. Administration of the Property: The Property shall be administered as follows:

a) Unit Owners and Board of Directors: The direction and administration of the Property shall be vested in unit owners, each of whom shall have one vote per unit. The unit owners shall elect and act through a Board of Directors (hereinafter called the "Board") in the manner set forth in the Bylaws attached hereto. Each member of the Board shall be an occupant who is a unit owner.

b) 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 Property in accordance with the provisions of this Declaration and said Bylaws and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for the maintenance fund hereinafter provided for, the following:

(1) Water, waste removal, natural gas, electricity and telephone and other necessary utility services for the common areas and

facilities and (if not separately metered or charged) for the units. Electricity, telephone services and cable television services will be separately metered and charged to each unit. The manner in which other utility services will be metered and charged may be determined by the Board of Directors.

(2) A policy or policies of fire insurance with such extended coverage as the Board shall determine to be reasonably required and to protect against losses from fire and other hazards and covering the common areas and facilities and each of the units. Said policy or policies shall provide for reappraisal of the insured premises at least annually and the limits shall be the replacement value of the units and the common areas and facilities. Said policy or policies may be payable to the members of the Board as trustees for each of the unit owners in the percentages established herein as their percentage ownership in the common areas and facilities, and to the unit owners' mortgagees, if any, as their interests appear, or directly to the insurer. The cost of such insurance shall be paid by the unit owners.

(3) A policy or policies in amounts determined by the Board, insuring the members of the Board and their agents and employees and the unit owners against any liability to the public or to the owners of the units and their invitees and tenants incident to the unit ownership and/or use of the common areas and facilities and limited common areas and facilities and the units.

(4) Workmen's Compensation Insurance to the extent necessary to comply with applicable laws and to the extent determined by the Board to be advisable, whether required by law or not.

(5) Landscaping, gardening, snow removal, painting, clearing, maintenance, decorating, repair and replacement of the general common areas and facilities and those limited common areas facilities which are not enclosed by a wall or fence and are open to all of the unit owners, and the Board shall have the exclusive right and duty to acquire the same for such common areas and facilities; provided, however, that limited common areas and facilities inside units (such as interior walls, including walls of covered atriums and covered entryways) shall be painted, cleaned, decorated, maintained and repaired by the unit owners. Limited common areas and facilities which

are enclosed by a wall or fence and are not open to all of the unit owners shall be maintained and landscaped by the owners of the units to which such limited common areas are appurtenant.

Notwithstanding the above, the Board will maintain all exposed exterior wall surfaces (including exposed atrium wall surfaces), exposed entryway roofs, gates/doors leading into exposed entryways from the street, canales, and all rock, stucco and/or wood walls and gates which bond common areas. The Board will paint, but not otherwise maintain, the exterior surfaces of doors accessible from entryways to the interior of the unit (excluding screen doors) and the front and entryway light housings.

The unit owner will maintain, replace and repair all sliding glass doors, windows, glass in doors, front and entryway lightbulbs, rear doors, window and door screens, security bars over windows or doors, furnaces, coolers, air conditioning units, skylight domes, chimneys, hose bibs, dryer vents, exterior electric outlets and other exterior lights. The unit owner is also responsible for the water line (including the valve) on the unit side of the valve and for the sewer line from the unit to the main sewer line.

The unit owner will maintain any unit modifications that have been made following original construction including additional skylights, wall extensions, additional roofs, additional flooring and tiles, etc.

Any structural damage to the unit shall be reported by the unit owner to the Board which shall determine needed remedial action and associated cost responsibility.

The unit owners may, at a meeting of the unit owners, adopt policies for the sharing of cost between unit owners and the Association for maintenance, repair and/or replacement when such work has been requested by a unit owner.

Easement rights over the entire Property is reserved to the Association.

(6) Construction, repair and maintenance of parking places for the guests and visitors of the unit owners as the Board may determine to be reasonably necessary or convenient.



(7) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments, water, gas, electricity, telephone service, garbage hauling and other utility services for the swimming pool, and other common areas and facilities which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law which, in the Board's opinion, are necessary or convenient for the benefit of the unit owners and the administration, maintenance and operation of the Property as a first class unit complex or for the enforcement of this Declaration and/or the Bylaws attached hereto.

(8) Any amount necessary to discharge any mechanic's or materialmen's lien or other encumbrance levied against the entire Property or any part thereof which may, in the opinion of the Board, constitute a lien against the Property or against the common areas and facilities rather than merely against the interests therein of particular unit owners. Where one or more unit 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 unit owners.

(9) Maintenance and repair of any unit if such maintenance or repair is necessary, in the opinion of the Board, to protect the common areas and facilities, or any other portion of the buildings, and the unit owner or owners of said unit have failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair delivered by the Board to such unit owner or owners, provided that the Board shall levy a special assessment against such unit owner for the cost of said maintenance or repair.

(10) 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, lifeguards, and others determined by the Board to be necessary or convenient.

The Board or its agents may enter any unit when necessary in connection with any maintenance, repair or construction of common areas and facilities accessible therefrom, and for making emergency repairs to prevent damage to the common areas and facilities or to another unit for which the Board is responsible. Such entry shall be made with as little inconvenience to the unit owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

c) Limitation of the Powers of the Board: The Board's power herein above enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the maintenance fund any capital addition or improvement (other than for purposes of replacing or restoring portions of the common areas and facilities, subject to all of the provisions of this Declaration) having a total cost in excess of \$2,500.00; nor shall the Board authorize any structural alterations, capital additions to, or capital improvements of the common areas and facilities requiring an expenditure in excess of \$2,500.00, without in each case obtaining the prior approval of the voting members holding a majority of the total votes. All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President of the Association. The Board may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the unit owners and occupants. Written notice of such rules and regulations shall be given to all unit owners and occupants, and the Property shall at all times be maintained subject to such rules and regulations.

5. Assessments and Maintenance Fund: There shall be a maintenance fund and assessments against the unit 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 common areas and facilities and the limited common areas and facilities which are not enclosed by a wall or a fence and are open to all unit owners, of the Property, for

the benefit of all of the unit owners and the administration, maintenance and operation of the Property and for the enforcement of the provisions of this Declaration and the Bylaws, attached hereto, which maintenance fund shall be financed or funded by assessments herein provided, paid by all unit owners. Each future unit owner, including transferees of future unit owners, shall, at the time he takes title to his unit, 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 unit owners, and if the Board fails to determine the amount of such sum, the amount shall be \$100.00. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31 of each year. Each year, on or before November 30, 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, maintenance, repair, replacement and improvement of the common areas and facilities of the Property during the ensuing fiscal year, for the exercise and performance of the powers and duties of the Board and for the benefit of the unit owners and the administration, maintenance and operation of the Property and for the enforcement of the provisions of this Declaration and the Bylaws attached hereto, together with a reasonable amount considered by the Board to be necessary for a reserve for the contingencies and replacements and shall notify each unit owner as to the amount of such estimate. Said estimated amount shall be assessed to the unit owners percentage of ownership in the common areas and facilities as set forth herein. On or before January 1 of each year, and the first day of each and every month of said year, each unit owner shall be obligated to pay to the Board, or as the Board may direct, one-twelfth of the assessment made pursuant to this Paragraph.

b) Management of the Maintenance Fund and Collection of the Assessments: On or before the date of each annual meeting of the unit owners, the Board shall supply to each unit 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 amounts collected pursuant to the estimated 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 according to each unit owners percentage of ownership in the common areas and facilities to the next monthly installment due from

unit owners under the current years estimate, until exhausted, and any net shortage shall be added according to each unit owners percentage of ownership in the common areas and facilities to the installments due in the succeeding six months 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 nonpayment of any unit owners assessment, the Board may at any time levy a further assessment, which shall be assessed to the unit owners according to each owners percentage ownership in the common areas and facilities. The Board shall serve notice of such further assessment on all unit owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due not less than ten days after the delivery or mailing of such notice of further assessment. All unit owners shall be obligated to pay the adjusted monthly amount. When the first Board elected takes office, it shall determine the "estimated case requirement" as above defined, for the period commencing thirty days after such election and ending on December 31 of the year in which said election occurs. Assessments shall be levied against the unit owners during said period as provided in this Paragraph. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the unit owners shall not constitute a waiver or release in any manner of such unit owners obligation to pay the maintenance costs and necessary reserve, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate, the unit owners shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the last previous period for which said monthly rate was established until the monthly maintenance payment which is due not less than ten days after such new annual or adjusted estimate shall have been mailed or delivered. The Board shall keep full and correct detailed books of account and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. The records and the vouchers authorizing the payments shall be available to inspection by any unit owner or any representative of any unit owner duly authorized in writing, at reasonable time or times during normal business hours as may be requested by the unit owner. Upon ten days notice to the Board and payment of a

reasonable fee any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such unit owner. All funds collected hereunder shall be held and expended for the purposes designated herein and (except for such special assessments as may be levied against less than all of the unit owners, and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the unit owners in the same percentages as their percentage ownership of the common areas and facilities specified herein. If a unit owner is in default in the monthly 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 unit 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 the New Mexico Condominium Act as from time to time amended, and 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 unit ownership of the unit owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of mortgages against real estate, and the period allowed for redemption shall be one month from and after the date of foreclosure sale. Said lien shall take effect and be in force when and as provided in the New Mexico Condominium Act; 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 encumbrancer of unpaid common expenses, only to the lien of all common expenses on the encumbered unit which become due and payable subsequent to the date said encumbrancer either takes possession of the unit, accepts a conveyance of any interest therein, or files suit to foreclose his lien. Any encumbrancer may from time to time request in writing a statement setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and, unless his request shall be complied with within twenty days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrancer. In the event of a voluntary conveyance of any unit ownership, the grantor and grantee shall be jointly and severally liable for all

unpaid common expenses and assessments for common expenses related to said unit ownership to the time of such grant or conveyance. Amendments to this Paragraph shall only be effective upon unanimous written consent of the unit owners and their mortgagees. No unit owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas and facilities or by abandonment of his unit.

6. Covenants and Restrictions as to Use and Occupancy: The units and common areas and facilities shall be occupied and used as follows:

a) The units and common areas and facilities shall be used and occupied solely and exclusively for the purpose of a lodging or dwelling for the unit owner, his family, guests or by a tenant or tenants of the unit owner in accordance with the provisions of this Declaration.

b) There shall be no obstruction to the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior consent of the Board except as hereinafter expressly provided. Each unit owner shall be obligated to maintain and keep in good order and repair his own unit and the limited common areas and facilities attached and appurtenant thereto.

c) Parking of vehicles, campers, trailers, boats and similar vehicles in the common areas shall be permitted only by obtaining prior written authorization from the Board and only by payment of such rental for use of the common area as the Board may determine in each case. Cars of unit owners and guests of unit owners shall be parked in garages, driveways or designated parking areas only.

d) Proposed modifications and additions to the unit must be submitted in writing by the unit owner for Board approval and be approved by the Board prior to construction. The Board shall have the right to inspect the construction following completion. Nothing shall be done or kept in any unit or in the limited common areas and facilities attached and appurtenant thereto or in the common areas and facilities which will increase the rate of insurance on the buildings or contents thereof, without the prior written consent of the Board. No unit owner shall permit anything to be done or kept in his unit or in the common areas and facilities which will result in the cancellation of insurance on the building involved or contents thereof or which would be in violation of law or constitute a

nuisance. No waste will be committed in the common areas and facilities.

e) Unit owners shall not cause or permit anything to be hung or displayed outside of windows or placed on the outside walls of the buildings and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Board.

f) No animals, rabbits, livestock, birds, fowl or poultry shall be raised, bred or kept in any unit, or in any of the common areas and facilities except that a unit owner may own and keep in his unit one dog and one domestic cat or two dogs or two domestic cats. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three days written notice from the Board. Any pet allowed to run free in the common areas or facilities may be removed therefrom by the Board and either disposed of or returned to the owner upon payment of such amount or performance of such other condition as the Board may determine.

g) No noxious or offensive activity shall be carried on in any unit or in the limited common areas and facilities or in the common areas and facilities, nor shall anything be done therein or thereon either willfully or negligently, which may be or become an annoyance or nuisance to other unit owners or occupants.

h) Nothing shall be done in any unit or in, on or to the common areas and facilities which will impair the structural integrity of any building or which would jeopardize the soundness or safety of any building or would structurally change any building, except as otherwise expressly provided herein, or which would reduce the value of or impair easements, servitudes, rights, privileges, or hereditaments belonging to or in anywise appertaining to the Property.

i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the limited common areas and facilities, the common areas and facilities or any part of any unit which is visible from any part of the common areas. The limited common areas and facilities and the common area and facilities shall be kept free and clear of rubbish, debris, and other unsightly materials at all times.

j) No industry, business, trade, occupation or

profession of any kind, commercial, religious, educational, or otherwise designed for profit, altruism, exploration or otherwise, shall be conducted, maintained, or permitted on any part of the Property, nor shall any "for rent" signs or other signs or displays or advertising of any kind be maintained or permitted on any part of the Property or in any unit therein, unless the prior written consent of the Board is first obtained. No part of the Property shall be used for other than housing and the related common purposes for which the Property was designed. Each unit shall be used as a residence for a single family and for no other purpose. However, a unit owner may use a portion of his unit for an office or studio provided that the activities therein and/or the visitors thereto shall not interfere with the quiet enjoyment of comfort of any other unit owner or occupant, and the Board of Directors shall have the power to determine whether such interference exists and, if necessary, to order that such interference cease and to file suit to enjoin the continuance thereof.

k) Nothing shall be altered or constructed or removed from the common areas or facilities except upon the prior written consent of the Board.

l) The common areas and facilities, and the use thereof, shall be subject to such rules, limits and charges as the Board shall from time to time determine.

7. Sale, Leasing, or other Alienation: The unit owners shall sell, lease, or alienate their units only as follows:

a) Sale: Each unit owner, other than the Developer, who wishes to sell his unit ownership or any interest therein, to any person not related by blood or marriage to the unit owner, shall give the Board prior written notice of the terms of any contemplated sale, together with the name and address of the proposed purchaser. Attached to said notice shall be a statement signed by the proposed purchaser that said purchaser has read and agrees to comply with the provisions of this Declaration and the Bylaws of the Association. The Board, acting on behalf of the other unit owners, shall at all times have the first and exclusive right and option to purchase such unit ownership or interest therein upon the same terms, which right shall be exercisable for a period of fifteen days following the receipt of such notice. If said right is not exercised by the Board within said fifteen days, the unit owner may, at the expiration of said fifteen day period and at any time within sixty



days after the expiration of said period, contract to sell such ownership to the proposed purchaser named in such notice upon the terms specified herein.

b) Lease or Rental: Any unit owner may lease or rent his unit to another person or persons, subject to the provisions of this Declaration and the Bylaws attached hereto and the rules, regulations and supervisory powers of the Board, and further subject to the approval by the Board of the proposed tenant and the proposed lease, prior to its effective date, provided that such approval shall not be unreasonably withheld. Said request for approval shall have as an attachment a statement signed by the proposed leasee or renter that said leasee or renter has read and agrees to comply with the provisions of this Declaration and the Bylaws of the Association. Unit owners who lease or rent their unit shall have the same responsibility for any damage to common areas and facilities as if they were residing in the unit. Such renting or leasing shall not relieve the unit owner of any of his obligations under this Declaration or the Bylaws or the Law.

c) Gift: Any unit owner who wishes to make a gift of his unit ownership or any interest therein to any person or persons who would not be heirs at law of the owner under the laws of the state of New Mexico were he or she to die within ninety days prior to the contemplated date of such gift, shall give to the Board prior notice of his intent to make such gift, together with the name and address of the intended donee and the contemplated date of said gift. The Board, acting on behalf of the other unit owners, shall at all times have the first right to purchase such unit ownership or interest therein for cash at fair market value to be determined by arbitration as herein provided, which right shall be exercisable for a period of forty-five days following the date of receipt of such notice. Within fifteen days after receipt of said written notice by the Board, the Board and the unit owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten days after their appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within fifteen days after the appointment of the third arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the unit ownership or interest therein which the unit owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the unit owner and to the Board and, if the Board elects to purchase the unit it shall pay such purchase price to

the unit owner in cash within said forty-five day period following receipt of such notice of contemplated gift.

d) Devise: If any unit owner dies leaving a Will devising his unit ownership, or any interest therein, to any person or persons not heirs at law of the deceased unit owner under the laws of the state of New Mexico, and said Will is admitted to Probate, the Board, acting on behalf of the other unit owners, shall at all times have the first right to purchase such unit ownership or interest for cash at fair market value to be determined by arbitration as hereinafter provided, either from the devisee or devisees thereof named in said Will or, if a power of sale is conferred by said Will upon the executor or executrix named therein, from the executor or executrix acting pursuant to such power of sale. Within sixty days after the appointment of a personal representative for the estate of the deceased unit owner, the Board shall appoint a qualified real estate appraiser to act as an arbitrator and shall thereupon give written notice of such appointment to the said devisee or devisees or executor or executrix, as the case may be. Within fifteen days thereafter said devisee or devisees, executor or executrix, as the case may be, shall appoint a qualified real estate appraiser to act as an arbitrator. Within ten days after the appointment of such arbitrator, the two so appointed shall appoint a third qualified real estate appraiser to act as the third arbitrator and within fifteen days thereafter the three arbitrators shall determine, by majority vote, the fair market value of the unit ownership or interest therein devised by the deceased unit owner, and shall thereupon give written notice of such determination to the Board and such devisee or devisees, executor or executrix, as the case may be. The Board's right to purchase the unit ownership or interest therein at the price determined by arbitration shall expire sixty days after the date of receipt by it of such notice, if the executor or executrix of the deceased owner is empowered to sell, and shall expire ten months after the appointment of an executor or executrix who is not so empowered to sell. The Board shall be deemed to have exercised its right to purchase if it tenders the required sum of money to the said devisee or devisees, or to the said executor or executrix, as the case may be, within the said periods of time. Nothing herein contained shall restrict the rights of the members of the Board, acting on behalf of the other unit owners, or their authorized representatives, pursuant to authority given to the Board by the unit owners as hereinafter provided, to bid at any sale of the unit ownership interest therein of any deceased unit owner which sale is held pursuant

to an order or direction of the Court having jurisdiction over that portion of the deceased unit owner's estate which contains his unit ownership or interest therein.

e) Involuntary Sale: In the event any unit ownership or interest therein is sold at a judicial or execution sale, other than a mortgage foreclosure sale, and the person acquiring title through such sale shall, before taking possession of the unit so sold, give thirty days written notice to the Board of his intention so to do, and the Board, acting on behalf of the other unit owners, shall at all times have the first right to purchase such unit ownership or interest therein at the same price for which it was sold at said sale, which right shall be exercisable for a period of thirty days following the receipt of such notice. The Board shall be deemed to have exercised its right if it tenders the required sum of money to the purchaser within said thirty day period. If any unit owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or deed of trust against his unit ownership, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have a lien against such unit ownership for the amount so paid, which lien shall have the same force and effect and may be enforced in the same manner as provided in Paragraph 5 hereof.

f) Consent of the Unit Owners: The Board shall not exercise any right hereinabove set forth to purchase any unit ownership or interest therein without the prior written consent of all of the voting unit owners, except the unit owner whose unit is the subject of the right to purchase by the Board and except any unit owner who may be the proposed purchaser of more than one unit. The members of the Board or their duly authorized representative, acting on behalf of the other unit owners, may bid to purchase at any sale of any unit ownership or interest therein, which sale is held pursuant to an order or direction of a Court, upon the prior unanimous written consent of the voting unit owners whose units are not subject to sale, which said consent shall set forth a maximum price which the members of the Board or their duly authorized representatives are authorized to bid and pay for said unit or interest therein.

g) Release or Waiver of Option: Upon the written consent of two-thirds of the Board members, any of the options or rights contained in sub-paragraphs (a) through (e) inclusive of this Paragraph 7 may be released or waived and the unit ownership or interest

therein which is subject to an option or right set forth in this Paragraph may be sold, conveyed, leased, given or devised free and clear of the provisions of this Paragraph.

h) Proof of Termination of Option: A certificate executed and acknowledged by the acting Secretary of the Board stating that the provisions of this paragraph 7 as herein above set forth have been met by a unit owner, or duly waived by the Board, and the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the unit owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any unit owner who has in fact complied with the provisions of the Paragraph 7 or in respect to whom the provisions of this Paragraph have been waived, upon request, at a reasonable fee, not to exceed \$10.00.

i) Financing of Purchase Under Option: Acquisition of unit ownerships or any interest therein under the provisions of this Paragraph shall be made from the maintenance fund. If said fund is insufficient, the Board shall levy an assessment on each unit owner in proportion to his ownership in the common areas and facilities, which assessment shall become a lien and be enforceable in the same manner as in Paragraph 5. The members of the Board, in their discretion, may borrow money to finance the acquisition of any unit ownership or interest therein authorized by this Paragraph 7; provided, however, that no financing may be secured by encumbrance or hypothecation of any portion of the Property other than the unit ownership or interest therein by the acquired.

j) Title to Acquired Interests: Unit ownerships or interests therein acquired pursuant to the terms of this Paragraph shall be held of record in the name of the Board, or such nominee as the Board designates, for the benefit of all the unit owners. Said unit ownership or interests therein shall be sold or leased by the Board for the benefit of all the unit owners. All proceeds of such sale and/or leasing shall be deposited in the maintenance fund and may thereafter be disbursed at such time and in such manner as the Board may determine.

8. Damage or Destruction and Restoration of Property: In the event of damage or destruction of all or any part of the Property the following rules shall apply:

a) Sufficient Insurance: If the improvements forming a part of the Property, or any part thereof,

including any unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of such insurance proceeds in payment thereof; provided, however, that if, within thirty days after such damage or destruction, the unit owners elect either to sell the Property as provided in Paragraph 9 thereof or to withdraw the Property from the provisions of the New Mexico Condominium Act as therein provided, then such repair, restoration or reconstruction shall not be undertaken.

b) Insufficient Insurance: If the Property or the improvements thereon so damaged are not insured against the risk causing the loss or damage, or the insurance proceeds are not sufficient to pay the cost of repair restoration or reconstruction, and the unit owners do not, by affirmative vote of at least two-thirds of the total vote, at a meeting of the unit owners duly called for such purpose, voluntarily make provision for the repair, restoration, or reconstruction of the improvements within one hundred-and-eighty days after such damage or destruction, then the insurance indemnity, if any, shall be delivered pro rata to the unit owners sustaining loss or damage, and the unit owners shall elect either to sell the Property as hereinafter provided in Paragraph 9 or to withdraw the Property from the provisions of this Declaration and from the provisions of the New Mexico Condominium Act as herein provided.

c) Extent of Repairs: Repairs, restoration or reconstruction of the improvements as used in this Paragraph means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before.

9. Sale of the Property: In the event all of the buildings and improvements on the Property are damaged or destroyed, the unit owners, by affirmative vote of at least three-fourths of the total vote of the unit owners cast at a meeting of the unit owners duly called for such purposes may elect to sell the Property as a whole. Such action shall be binding upon all unit owners, and it shall thereupon become the duty of each unit owner to execute and deliver such instruments and to perform all acts which may be necessary

or convenient to effect such sale; provided, however, that any unit owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair appraisal, less the amount of unpaid assessments or charges due and owing from such unit owner. In the absence of agreement on an appraiser, such unit owner and the Board may each select an appraiser and the two so selected shall select a third and the fair market value as determined by a majority of the three so selected shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal.

10. Remedies for Breach of Covenants, Restrictions and Regulations: If any covenant, restriction or regulation applicable to the Property is violated the following remedies shall apply:

a) Abatement and Enjoinment: The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the right, in addition to the rights set forth elsewhere herein or provided by law, to enter upon the Property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Developer or its successors or assigns, or the Board or its agents, shall not thereby be deemed guilty of trespass, or to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity the continuance of any breach.

b) Termination of Ownership: If any unit owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the Bylaws hereto attached or the regulations adopted by the Board, and such violation shall continue for thirty days after notice in writing from the Board, or shall occur repeatedly during any thirty day period after written notice or request to cure such violation from the Board, then the Board shall have the power to issue to the defaulting unit owner a ten day notice in writing to terminate the rights of the said defaulting unit owner to continue as a unit owner and to continue to occupy, use or control his unit and thereupon a suit in equity may be filed by the members of the Board against the defaulting unit

owner for a mandatory injunction against the unit owner or occupant, or, subject to the prior consent in writing of any mortgagee having a mortgage lien on the unit ownership of the defaulting unit owner, which consent shall not be unreasonably withheld, in the alternative, a decree declaring the termination of the defaulting unit owner's right to occupy, use or control the unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the unit owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the Court may order, except that the Court shall enjoin and restrain the defaulting unit owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge the Court costs, special master's fees, reasonable attorney's fees and all other expenses of the suit and judicial sale, and all such items shall be taxed against the defaulting unit owner as costs in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the unit owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a Deed to the unit ownership and to immediate possession of the unit sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Property sold subject to this Declaration and the Bylaws hereto attached.

11. General Provisions: The following general provisions shall govern the administration and management of the Property:

a) The Board of Directors provided for in this Declaration has been formed to exercise the powers, rights, duties 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 unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the unit owner or unit owners whose unit ownership is subject to such mortgage or Deed of Trust.

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

d) Notices required to be given any devisee or personal representative of a deceased unit owner may be delivered either personally or by mail to such personal representative at his or its address appearing in the records of the Court wherein the estate of such deceased unit owner is being administered.

e) Each unit owner, by the acceptance of a deed or other instrument of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers 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 unit 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 invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, or any part thereof, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

h) If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of the rule against perpetuities or some analogous statutory provision or the rule restricting restraints on alienation or any other statutory or common law rule imposing time limits, then such option, privilege, covenant or right shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Robert (Bobby) Kennedy, late United States Senator from New York, and candidate for the Presidency of the United States.

i) The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class Condominium development. This Declaration may be amended by the unit ownerships by affirmative vote of at least three-fourths of the



total vote of the unit owners, having voting rights, cast at a meeting of the unit owners duly called for such purpose.

j) The agent for service of process upon the unit owners is the President of Las Casitas Condominium Association, 40 Las Casitas, Las Cruces, New Mexico 88005.

k) The provisions of paragraph 3, subparagraphs c, f and g and paragraph 5, subparagraphs a and b and paragraph 11, subparagraph e and this subparagraph k of 12 of this Declaration may be amended, changed, modified or rescinded only by a written instrument setting forth such amendment, change, modification or recision which has been unanimously approved by the Board, the unit owners and all persons having bona fide liens of record against any unit ownership, such unanimous approval being shown by a sworn and acknowledged certificate from the chief officer and secretary of the Board. Other provisions of this Declaration may be amended, changed, modified or rescinded only by a written instrument setting forth such amendment, change, modification or recision which has been approved by the members of the Board and the unit owners having at least seventy-five per cent of the total votes thereof, such approval being shown by a sworn and acknowledged certificate from the chief officer and secretary of the Board. Any amendment, change, modification or recision of this Declaration or the Bylaws hereto attached 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 recision of any provision of this Declaration or the Bylaws hereto attached shall be valid or effective if such amendment, change, modification or recision violates or conflicts with the New Mexico Condominium Act as amended from time to time, or any other applicable statute of New Mexico.

The foregoing are adopted as the Declaration of Condominium of the unit owners and the Board of Directors of LAS CASITAS CONDOMINIUM ASSOCIATION, a condominium association, and shall be recorded in the office of the County Clerk of Dona Ana County, New Mexico.

LAS CASITAS CONDOMINIUM ASSOCIATION

By Irving J. Wolf  
President

Jerry Zittel  
Secretary

STATE OF NEW MEXICO )  
  : SS  
County of Dona Ana )

The foregoing instrument was acknowledged before me this 15th day of January, 1991, by

Irving J. Wolf President of  
LAS CASITAS CONDOMINIUM ASSOCIATION, on behalf of said  
Association.

Peggy Ann Jewell  
Notary Public

My Commission expires:

February 2, 1991  
Date

AFFIDAVIT AND CERTIFICATE

STATE OF NEW MEXICO )  
                                  : ss.  
County of Dona Ana )

I, IRVING J WOLF, being duly sworn, upon my Oath state and certify that I am the President of LAS CASITAS CONDOMINIUM ASSOCIATION and that the foregoing AMENDMENT AND RESTATEMENT OF DECLARATION OF CONDOMINIUM OF LAS CASITAS CONDOMINIUM ASSOCIATION has been approved by the members of the Board of LAS CASITAS CONDOMINIUM ASSOCIATION and the unit owners of LAS CASITAS CONDOMINIUMS, a condominium having more than three-fourths of the total votes of the unit owners having voting rights cast at a meeting of said unit owners duly called for such purpose and held on the 15th day of January, 1991.

Peggy Ann Terrell  
Notary Public

My Commission expires  
July 2, 1991  
Date