

8134272

FILED IN
STATE CORPORATE
OFFICE

001 8. 1996

Bylaws of Mountain Haven Association

Article 1 - Name

The name of the corporation is Mountain Haven Association, hereinafter referred to as the Association. The principal office of the corporation shall be located at Unit 1, Centro Plaza, Angel Fire, NM 87710, but meetings of members and directors may be held at such places within the State of New Mexico, County of Colfax, as may be designated by the Board of Directors.

Article 2 - Definitions

Section 2.1. Association: Mountain Haven Association, a New Mexico Nonprofit corporation, its successors and assigns.

Section 2.2. Common Area: all real property owned by the Association for the common use and enjoyment of the Owners, as shown on the subdivision plat recorded at Book 9, page 23, Records of Colfax County, New Mexico.

Section 2.3. Declarant: Mountain Haven, Ltd., a Texas limited partnership.

Section 2.4. Declaration: the Declaration of Covenants applicable to Mountain Haven Subdivision, recorded in the Office of the Clerk of Colfax County, New Mexico, at Book 7, pages 5460-5472.

Section 2.5. Lot: any plot of land shown upon any recorded subdivision plat of the Property with the exception of the Common Area.

Section 2.6. Member: those persons entitled to membership as provided in the Declaration.

Section 2.7. Owner: the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2.8. Property: that certain real property described in the Declaration of Covenants.

Article 3 - Meeting of Members

Section 3.1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter, at the hour of 10:00 o'clock, a.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3.3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, ten percent (10%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

Article 4 - Board of Directors: Selection; Term of Office

Section 4.1. Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be members of the Association.

Section 4.2. Term of Office. At the first annual meeting the members shall elect one director for a term of one year, one director for a term of two years, and one director for a term of three years; and at each annual meeting thereafter the members shall elect a director for a term of three years.

Section 4.3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4.4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Article 5 - Nomination and Election of Directors

Section 5.1. Nomination. Nominations may be made from the floor at the annual meeting. Such nominations may be made from among members or non-members.

Section 5.2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Article 6 - Meeting of Directors

Section 6.1. Regular Meetings. Regular meetings of the Board of Directors shall be held semi-annually at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 6.3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 6.4 Consent to Corporate Action. If all the Directors or all Directors of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The secretary shall file these consents with the minutes of the meetings of the Board.

Section 6.5 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

Article 7 - Powers and Duties of the Board of Directors

Section 7.1. Powers. The Board of Directors shall have power to:

- adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the violation thereof;
- suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
- exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 7.2 Duties. It shall be the duty of the Board of Directors to:

- cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

- supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- as more fully provided in the Declaration, to:
- fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;
- send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
- foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- procure and maintain adequate liability and hazard insurance on property owned by the Association;
- cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- cause the Common Area to be maintained. In this regard, the Board shall, no less frequently than annually, establish a Road Maintenance Plan. Each annual plan shall provide for the removal of vegetation and other obstructions from the ditches and other drainage structures adjacent to the roads, and other drainage ways, the clearing of culverts so that the flow of water through the culverts is not impeded. As Lots are improved with residences, the plan shall also provide for the removal of snow from the roads, and for the resurfacing, grading and compacting of the road surfaces, taking into account erosion and wear and tear to the roads since the last inspection. An example of a road maintenance plan is attached hereto as Exhibit A, for the guidance of the Board.

Article 8 - Officers and Their Duties

Section 8.1. Enumeration of Officers. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 8.3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8.8. Duties. The duties of the officers are as follows:

- **President** - The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

- **Vice President** - The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

- **Secretary** - The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

- **Treasurer** - The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

Article 9 - Committees

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, composed of three members. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

Article 10 - Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

Article 11 - Assessments

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Article 12 - Amendments

Section 12.1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.


Section 12.2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Article 13 - Miscellaneous

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

In witness whereof, we, being the Secretary and the President of the Mountain Haven Association, have hereunto set our hands this 26th day of April, 1996.


Secretary


President

Filed For Record 10-16-96 at 1:27 PM Barbara Castillo, Recorder

**Notice of Revocation of Filing of Bylaws
of Mountain Haven Association**

On August 2, 1996, the undersigned, Stan Harrell, the Secretary and Tim Allen, the President, of Mountain Haven Association, caused to be filed in the State of New Mexico, County of Colfax, Real Estate Records, Book 7, pages 5473-5478, the Bylaws of Mountain Haven Association (the "Bylaws"). Said filing was made inadvertently and is of no force and effect. By this Notice of Revocation, the undersigned hereby revoke the filing of the Bylaws and declare that said filing is null and void. The undersigned further state and declare that the Bylaws and all provisions contained therein shall not constitute nor be considered encumbrances on the real property that is owned by the Mountain Haven Association and identified in the Bylaws.

In witness whereof, we, being the Secretary and the President of the Mountain Haven Association, have hereunto set our hands this 7th day of OCTOBER, 1996.

Stan Harrell
Secretary

Tim Allen
President

State of ~~New Mexico~~ Texas

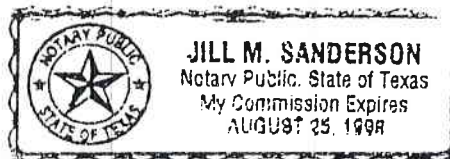
County of ~~Colfax~~ Dallas

This instrument was acknowledged before me this 7th day of OCTOBER, 1996 by Tim Allen, President of Mountain Haven Ltd., a Texas limited partnership and Stan Harrell, Secretary of Mountain Haven Ltd., a Texas limited partnership, on behalf of said limited partnership.

Jill M. Sanderson
Notary Public

My Commission Expires:

8-25-98



Filed For Record 8-2-96 at 2:42 PM Barbara Castillo, Recorder

**Declaration of Covenants
Mountain Haven**

This Declaration, made on the date hereinafter set forth by Mountain Haven, Ltd., a Texas limited partnership, hereinafter referred to as "Declarant."

Declarant is the owner of certain property in Colfax County, State of New Mexico, which is more particularly described on the plat therefor recorded at Book 9, page 23, Records of Colfax County, New Mexico.

Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property in perpetuity and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Article 1 - Definitions

- **Association:** Mountain Haven Association, its successors and assigns.
- **Common Area:** all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is all of the Property exclusive of the Lots.
- **Declarant:** Mountain Haven, Ltd., a Texas limited partnership.
- **Limited Common Area:** A part of the Common Area designated for the exclusive use of one or more, but not all, Lots. At the time of recording hereof, the Limited Common Areas are parking spaces, two of which are assigned to each Lot, as shown of the Plat.
- **Lot:** any plot of land shown upon the recorded subdivision map of the Property, designated Townhouse 1 through Townhouse 6, inclusive.

• **Owner:** the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

• **Plat:** the subdivision plat for Mountain Haven, recorded at Plat Cabinet 9, page 23, Records of Colfax County, New Mexico.

• **Property:** that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Article 2 - Property Rights

Section 2.1. Owners' Easements of Enjoyment.

Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions.

• the right of the Association to suspend the voting rights and right to use of the Common Area by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

• the power of the Association to make and amend reasonable rules and regulations, which shall be binding upon all members, including rules and regulations which may limit the use of the Common Area by guests or members. Such rules and regulations shall govern the use and enjoyment of the Common Area. The board of Directors shall have the power to enforce the rules and regulations by appropriate means, including suspending anyone's right to use and enjoy the Common Area for violating such rules and regulations. No such suspension shall affect any Owner's obligation to pay assessments.

• the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or

utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2.2 Delegation Of Use.

Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area to the members of his family, his guests, his tenants, or contract purchasers who reside on the property.

Article 3 - Membership and Voting Rights

Section 3.1 Assessment.

Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 3.2 Classes of Voting Membership.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 2005.

Article 4 - Covenant for Maintenance Assessments

4.1 Creation of Assessments.

The Association is hereby authorized to levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in §4.5; and (d) Specific Assessments as described in §4.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (not to exceed the highest rate allowed by New Mexico law), late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in §4.8. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, within ten (10) business days, upon written request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for assessments, by nonuse of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or

for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

4.2 Declarant's Obligation for Assessments.

The Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Article, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

4.3 Computation of Base Assessment.

At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in §4.4.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

4.4 Reserve Budget.

The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the assessments in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Assessments over the budget period.

4.5 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the votes allocated to Lots, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

4.6 Specific Assessments.

The Board shall have the power to levy Specific Assessments against a particular Lot or Lots constituting less than all Lots within the Property:

4.6.1 To cover costs, including overhead and administrative costs.

4.6.2 To cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying in Specific Assessments under this subsection 4.6.2.

4.7 Date of Commencement of Assessments.

The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on

each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

4.8 Lien for Assessments.

All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of New Mexico law), and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when delinquent, by suit, judgment, and foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal *pro rata* share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under §4.7, including such acquirer, its successors and assigns.

4.9 Failure to Assess.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

4.10 Capitalization of Association.

Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or Declarant's Grantee, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) the annual Base Assessment per Lot for that year, or \$100.00, whichever is greater. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association from the closing, for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Article 5 - Architectural Control

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Article 6 - Party walls

6.1 General rules of law to apply.

To the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions, shall apply to each party wall which is built as part of the original construction of the Homes upon The Property and any replacement thereof.

In the event that any portion of any structure, existing on the date of the recording hereof, including any party wall shall protrude over an adjoining lot, such structure or party wall shall not be deemed to be an encroachment upon the adjoining lot or lots, and Owners shall neither maintain any action for the removal of a party wall or projection, nor any action for damages. In the event there is a protrusion as described in the immediately preceding sentence, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or party wall. The structures foregoing shall also apply to any

replacements of any structures or party walls if same are constructed in conformance with the original structure or party wall constructed by Developer. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

6.2 Sharing of repair and maintenance.

The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. The cost of reasonable repair and maintenance of a party fence shall be an expense of the Association.

6.3 Destruction by fire or other casualty.

If a party wall or party fence is destroyed or damaged by fire or other casualty, and such damage is not otherwise covered by insurance as set forth in Schedule A, any Owner who has used the wall or fence must restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

6.4 Weatherproofing.

Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

6.5 Right to contribution runs with land.

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.6 Arbitration.

In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The decision of the arbitrators shall be binding and conclusive upon the parties. However, any party to the dispute shall thereafter have the right to institute any action or proceeding, at law or equity, which he deems necessary or desirable to appeal this decision.

Article 7 - Exterior Maintenance

7.1 Maintenance by Association.

The Association shall be responsible for landscape maintenance and snow removal from the roadways on The Property, maintenance of the walks, fences, parking spaces, roadways, and facilities comprising the Common Area.

7.2 Disrepair of Lots.

In the event the Owner of any Lot shall fail to maintain the Lot in a manner satisfactory to the Board of Directors of the Association, including but not limited to exterior maintenance of buildings, walkways, driveways and parking spaces, upon direction of the Board of Directors, the Association shall have the right, through its agents and employees to enter upon the Lot to repair, maintain and restore the Lot and the buildings and any other improvements erected thereon. The cost of such maintenance shall be added to and become part of the assessments to which such Lot is subject.

7.3 Access at reasonable hours.

For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agent and employees, shall have the right on notice to enter upon any Owner's Lot at reasonable hours, on any day except Sundays and holidays (except that in an emergency situation such notice need not be given and entrance may be made at any time).

Article 8 - Insurance

8.1 Common areas.

The Board of Directors shall maintain public liability insurance, to the extent obtainable, covering each association Member, lessee and occupant and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Area. All insurance premiums shall be a common maintenance expense of the Owners.

8.2 Lots.

The Association shall be required to obtain and maintain adequate insurance on all the Lots which shall insure the Lots and the improvements thereon for their full replacement value with no deductions for depreciation against loss by fire or other hazards or in an amount sufficient to prevent the Owners from being co-insurers. Such insurance shall

be sufficient to cover the full replacement value, or for necessary repair or reconstruction work. The cost of such insurance shall be a common maintenance expense of the Owners

8.2.1 The purpose of such insurance will be to protect, preserve and provide for the continued maintenance and support of separately owned homes which shall include common party walls, connected exterior roofs and other parts of the overall structure. Insurance obtained by the Board of Directors shall be written in the name of the Association as Trustee for the benefit of each Owner.

8.2.2 Repair of replacement of damaged or destroyed property. The Association shall unless otherwise required by the mortgagee having a lien on the damaged Lot utilize the insurance proceeds to reconstruct or repair any home destroyed by fire or other casualty. The insurance proceeds on policies secured either by the Owner or the Board of Directors shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature of an agent duly authorized by the Board of Directors. Within thirty (30) days of the receipt of the insurance proceeds, the Board of Directors shall initiate the repair or rebuilding of the damaged or destroyed portions of the structure of the improvements on the Lot, in a good and workmanlike manner in conformance with the original plans and specifications. If the insurance proceeds are insufficient to pay the costs of rebuilding the damaged portions in a good and workmanlike manner, the Board of Directors shall levy a Specific Assessment against the Owner sufficient to make up the deficiency. If the insurance proceeds exceed the cost of rebuilding, such excess shall be paid over to the Owner or Owner's mortgagee in such amounts as shall be determined by those parties.

Article 9 - General Provisions

Section 9.1 Enforcement.

The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2 Severability.

Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9.3 Amendment.

The consent of Voting Members representing at least sixty-seven percent (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, shall be required to amend this Declaration. In addition, the approval of Eligible Mortgagees holding mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- voting;
- assessments, assessment liens, or subordination of such liens;
- reserves for maintenance, repair, and replacement of the Common Area;
- insurance or fidelity bonds;
- rights to use the Common Area;
- responsibility for maintenance and repair of the Property;
- expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association;
- boundaries of any Lot;
- leasing of Lots;
- imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
- any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

9.3.1 Validity and Effective Date of Amendments.

Amendments to this Declaration shall become effective upon recordation in the land records of Colfax County, New Mexico, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 26 day of April, 1996.

Declarant: Mountain Haven Ltd., a Texas limited partnership
By: Lion Properties, Inc., a Texas corporation, general partner

By: *Tim Allen*
Tim Allen, President

State of Texas

County of Dallas

This instrument was acknowledged before me on ^{April} ~~February~~ 26, 1996, by Tim Allen, president of Lion Properties, Inc., a Texas corporation, general partner of Mountain Haven, Ltd., a Texas limited partnership, on behalf of said limited partnership.

Cindy W. Dews
Notary Public
My Commission Expires: 3-28-2000

