

SFC Clerk 01/04/2005

CONDOMINIUM DECLARATION
FOR
LAS ROSAS, A CONDOMINIUM

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss CONDO DECLARATION
PAGES: 13

I Hereby Certify That This Instrument Was Filed for
Record On The 4TH Day Of January, A.D., 2005 at 11:17
And Was Duly Recorded as Instrument # 1561025
Of The Records Of Santa Fe County

Witness By Hand And Seal Of Office
Valerie Espinoza
Deputy Valerie Espinoza County Clerk, Santa Fe, NM



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Article 1
Submission of the Property; Defined Terms

1.1 Submission of Property

L&K Ray, LLC a New Mexico limited liability company, owner of the real property described below, located within Santa Fe County, New Mexico, submits the real property, together with all easements, rights and appurtenances thereto (Property) to the provisions of New Mexico Laws 1982, Chapter 27 (Chapter 47, Articles 7A, 7B, 7C and 7D, N.M.S.A. 1978), known as the New Mexico Condominium Act (Condominium Act or the Act), and creates a Condominium with respect to the Property to be known as Las Rosas, a Condominium (Condominium).

1.2 Defined Terms.

- **Association:** Las Rosas Condominium Association, a New Mexico non-profit corporation.
- **Bylaws:** the Bylaws of the Association.
- **Directors:** the Board of Directors of the Association.
- **Documents:** The Declaration, Plat and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is a part of that Document.
- **Eligible Mortgagee:** The holder of a first Security Interest in a Unit which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Unit. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 6.
- **Owner:** the owner of a Unit as defined herein. In the event a Unit is held in trust or owned by a legal entity, the term shall also include the trustee, an officer or director, manager or member or the owner of a beneficial interest in the entity.
- **Property:** Lots 25, 26, 27, and 28 of the Wilson Addition, by James C. Harvey, dated July 1946 and recorded in the office of the Santa Fe County Clerk in Book 3, page 404.
- **Regulations:** Any Regulations of the Association, adopted by the Board of Directors of the Association pursuant to §47-7C-2 NMSA 1978.
- **Reserved Common Element:** a portion of the Common Elements designated by the Board of Directors for the exclusive use of one or more but fewer than all the Units, pursuant to §47-7C-2, N.M.S.A. 1978.

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- **Security Interest:** An interest in real estate created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, land sales contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.
- **Other Terms:** Terms not otherwise defined herein or in the Plat, Plan, Exhibits, or Bylaws, or in any amendment hereto, shall have the meanings specified in §47-7A-3 of the New Mexico Condominium Act.

Article 2

Buildings on the Property; Unit Boundaries; Maintenance

2.1 The Buildings.

The location, dimensions and area of the buildings on the Property are depicted on Exhibit "A" (Plat and Plan).

2.2 Units.

The location of Units and any Limited Common Elements allocated exclusively to each Unit are shown on the Plat and Plan. There are three (3) Units, Units 1, 2 and 3. Each unit is assigned a one-third ownership interest in the Common Elements and a one-third liability for Common Expenses, based upon equality. One vote in the Association is assigned to each unit.

2.3 Unit Boundaries.

Each Unit consists of the space within the walls, floors and ceilings of that Unit.

2.4 Maintenance Responsibilities.

Each Unit Owner shall be responsible for the repair and replacement of the Limited Common Elements appurtenant to his Unit, and glass in the windows and doors of his unit. All replacement glass shall be subject to the approval of the Association. Should the Board of Directors determine that any Unit Owner has neglected properly to maintain or to repair any Limited Common Element appurtenant to his Unit, the Board may provide exterior maintenance upon such Limited Common Element.

2.5 Common Expenses Attributable to Fewer than all Units.

Any Common Expense associated with the maintenance, repair or replacement of any Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.

Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

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If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Article 3 Restriction on Units and Common Elements

3.1 Designation of Reserved Common Elements.

The Board of Directors shall have the power in their discretion to designate from time to time certain Common Elements as Reserved Common Elements and grant reserved rights to any or less than all of the Unit Owners and establish a reasonable charge to such Unit Owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

3.2 Use of Unit and the Common Elements.

No immoral, improper, offensive or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations. A violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

3.3 Occupancy Restrictions.

The following occupancy restrictions apply to all Units and to the Common Elements:

- * No electrical device creating electrical overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.
- * Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash will be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.
- * All fixtures and equipment will be used for the purposes for which they were designed.
- * No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noiser by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be

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done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or occupants.

- No sign, window display or advertising visible from outside a Unit shall be maintained or permitted in any part of a Unit, except with the prior permission of the Association.
- The use of each Unit described in this Declaration is restricted to that of a single family residence and accessory uses as permitted herein. The term "single family residence" means a single housekeeping unit, operating on a nonprofit, noncommercial basis between its Occupants, cooking and eating with a common kitchen and dining area.
- Nothing shall be altered or constructed in or removed from the Common Elements or Limited Common Elements except with the prior written consent of the Directors.
- The Common Elements shall be used only for the uses for which each were designed and are reasonably suited incident to the use and occupancy of the Units.
- No Owner shall enter into a lease of his or her Unit for an initial term shorter than thirty days, nor without first executing a written lease with the lessee. Such lease shall require the lessee to comply with the terms and provisions of the Condominium Documents and further, provide that the failure of the lessee to comply with these Condominium Documents constitutes a default under the terms of the lease. Each Unit Owner shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Directors. The foregoing provisions of this subsection shall not apply to the Declarant, or to an Eligible Mortgagee in possession of a Unit as a result of foreclosure or any proceeding in lieu of foreclosure, during the period of such Eligible Mortgagee's possession.

3.4 Subdivision of Units.

No Unit may be subdivided as provided in §47-7B-13 of the Act.

3.5 Satellite Antennae.

Antennae for the reception of satellite television signals may be installed only on the Limited Common Elements appurtenant to a Unit. Prior to installation of an antenna, the Owner shall submit to the Directors a drawing of the proposed installation, together with a description of any penetration or modification of the Common Elements. Permission for the installation shall be denied only if the proposed installation would cause material damage to the Common Elements.

3.6 Timeshare Prohibited.

No Unit shall be conveyed pursuant to a timeshare plan.

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**Article 4
Easements**

4.1 Easement for Ingress and Egress Through Common Elements and Access to Units.

4.1.1 Each Unit Owner in common with each other Unit Owner is hereby granted a non-exclusive easement appurtenant to each Unit for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Unit Owners' Association.

4.1.2 Declarant reserves in favor of Declarant and the managing agent and/or any other person authorized by the Board of Directors the right of access to any Unit as provided in §47-7C-7 of the Condominium Act. In case of emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

**Article 5
Amendment of Declaration**

5.1 Restrictions On Amendments.

No material amendment of this Declaration may be made by the Association or the Owners without the prior written consent of fifty-one percent (51%) of the Eligible Mortgagees holding Security Interests encumbering Units. An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any amendment or change to any provisions which establishes, governs or regulates any of the following are material:

- Voting;
- Changes the Percentage Interests of any Unit for purposes of levying assessments or otherwise changes the obligations of any Unit for assessment liens or subordination of such liens;
- Responsibility for maintenance and repairs;
- Reallocation of interest in the Common Elements, or rights to their use except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and only Eligible Mortgagees holding Security Interests in such Units must approve such action;
- Boundaries of any Unit and/or partition or subdivision of any Unit or the Common Elements except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Unit Owners and the Eligible Mortgagees holding Security Interests in such Unit or Units must approve such action;
- Convertibility of Units into Common Elements or of Common Elements into Units;
- Expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the provisions of the Condominium;
- Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;

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- Restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than specified in the Act or Documents;
- Assessments, assessment liens or subordination of assessment liens;
- Reserves for maintenance, repair and replacement of Common Elements;
- Establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- By act or omission withdraw the submission of the Property to the Act, except as provided by the Documents and Act, in case of substantial destruction or condemnation of the Units and Common Elements; or
- Any provisions which are for the express benefit of Eligible Mortgagees.

Notwithstanding the foregoing, the approval of sixty-seven percent (67%) of all the Eligible Mortgagees is required to add or amend any material provisions of the Declaration which terminates the legal status of the Property for reasons other than the substantial destruction or condemnation of the Property.

5.2 Implied Consent of Eligible Mortgagees.

A proposed amendment shall be deemed approved by an Eligible Mortgagee if the Eligible Mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal.

5.3 Amendment by Unit Owners.

Except as otherwise provided or reserved herein or in the Act, this Declaration may be amended only by a vote of agreement of Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

5.4 Implied Consent of Owners.

A proposed amendment shall be deemed approved by an Owner if the Owner fails:

- to vote in person or by proxy at a meeting properly called for that purpose; and
- fails to object or approve a written proposal for an amendment within thirty (30) days after receipt of a written proposal following such meeting.

5.5 Extension of Amendments.

An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association.

Article 6
Protection of Security Interests

6.1 Eligible Mortgagee Protection.

Except as specifically provided in the Declaration or in the Act, no provision of the Declaration shall be construed to grant to any Owner or to any other person, any priority over any lien rights of an Eligible Mortgagee pursuant to its Security Interest in the case of distributions of insurance proceeds or condemnation awards.

6.2 Subordination.

Notwithstanding any other provision of this Declaration to the contrary, the lien of any assessment levied pursuant to the Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of an Eligible Mortgagee; provided, however, that such subordination shall apply only to assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

6.3 Notice of Actions.

The Association shall give prompt written notice to each Eligible Mortgagee of:

- Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a Security Interest held by such Eligible Mortgagee;
- Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a first Security Interest held by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;
- Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Article 5 hereof; and
- Any judgment rendered against the Association.

6.4 Inspection of Books.

The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

6.5 Financial Statements.

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The Association shall provide any Eligible Mortgagee, which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement may be audited by an independent certified public accountant if any Eligible Mortgagee requests it, in which case the Eligible Mortgagee shall bear the cost of the audit.

6.6 Enforcement.

The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

6.7 Attendance at Meetings.

Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Article 7 Association May Assign Income

The Unit Owners' Association shall have all the powers provided for in §47-7C-2 of the Condominium Act including but not limited to the right to assign its right to future income (including the right to receive Common Expense Assessments) for the purpose of securing repayment of funds borrowed or indebtedness incurred by the Association in the performance of its responsibilities.

Article 8 Special Declarant Rights

8.1 Declarant Control of the Association.

Pursuant to §47-7C-3 of the Condominium Act, Declarant reserves the right to appoint the members of the Board of Directors of the Association during the maximum period allowed by Subsections D and E of §47-7C-3, subject to the provisions of §47-7C-3(E).

8.2 Use for Sales Purposes.

All Units shall be subject to the statutory right in favor of Declarant provided in §47-7B-15 of the Condominium Act. Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

Article 9 Substantial Completion

It is hereby certified that the structural and mechanical systems of all buildings containing Units, have been substantially completed in accordance with the Plat and Plan.

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**Article 10
Taxation**

Each Unit shall be deemed a separate parcel for tax purposes, and shall be separately assessed.

**Article 11
Alternate Dispute Resolution**

All claims, disputes and other matters in question between the Unit Owners, or between an Owner and the Association arising out of, or relating to, the Project Documents or the violation thereof shall be decided by arbitration in accordance with the New Mexico Arbitration Act, unless the parties mutually agree otherwise. This requirement to arbitrate shall be specifically enforceable. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the District Court of Santa Fe County.

Any arbitration hereunder shall be held in Santa Fe, New Mexico, before one arbitrator, who shall be a lawyer licensed and practicing in the State of New Mexico, chosen by the parties.

Each party shall be entitled to discovery as set forth in the New Mexico Rules of Civil Procedure, and the arbitrator shall be empowered to impose such sanctions as he sees fit for failure to comply with discovery. The arbitrator may award such attorneys' fees and costs to the parties as they may deem equitable.

Arbitration proceedings shall be initiated by service of demand for arbitration upon the party or parties from whom relief is requested, in person or by certified mail, return receipt requested, at the address stated in this Contract. If the parties cannot agree upon an arbitrator, either party may apply to the presiding judge of the First Judicial District, who shall designate an arbitrator, who shall be an attorney experienced in real estate law.

In witness whereof, the undersigned have executed this Declaration this 29 day of December, 2004.

Declarant:

L&K Ray, LLO

By: Lisa Ray
Lisa Ray, Member

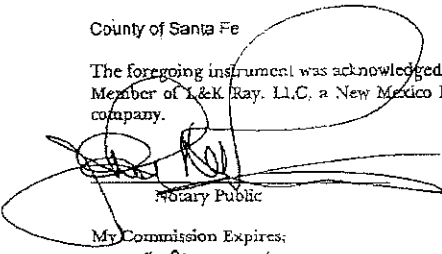
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State of New Mexico

County of Santa Fe

The foregoing instrument was acknowledged before me on the 29 day of December, 2004, by Lisa Ray, Member of L&K Ray, L.L.C., a New Mexico limited liability company, on behalf of said limited liability company.


Notary Public

My Commission Expires:

19 Mar 06



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 The original plat and plan was recorded in the Santa Fe County records as Document No. 1361435
 on December 2004
 January 4, 2005

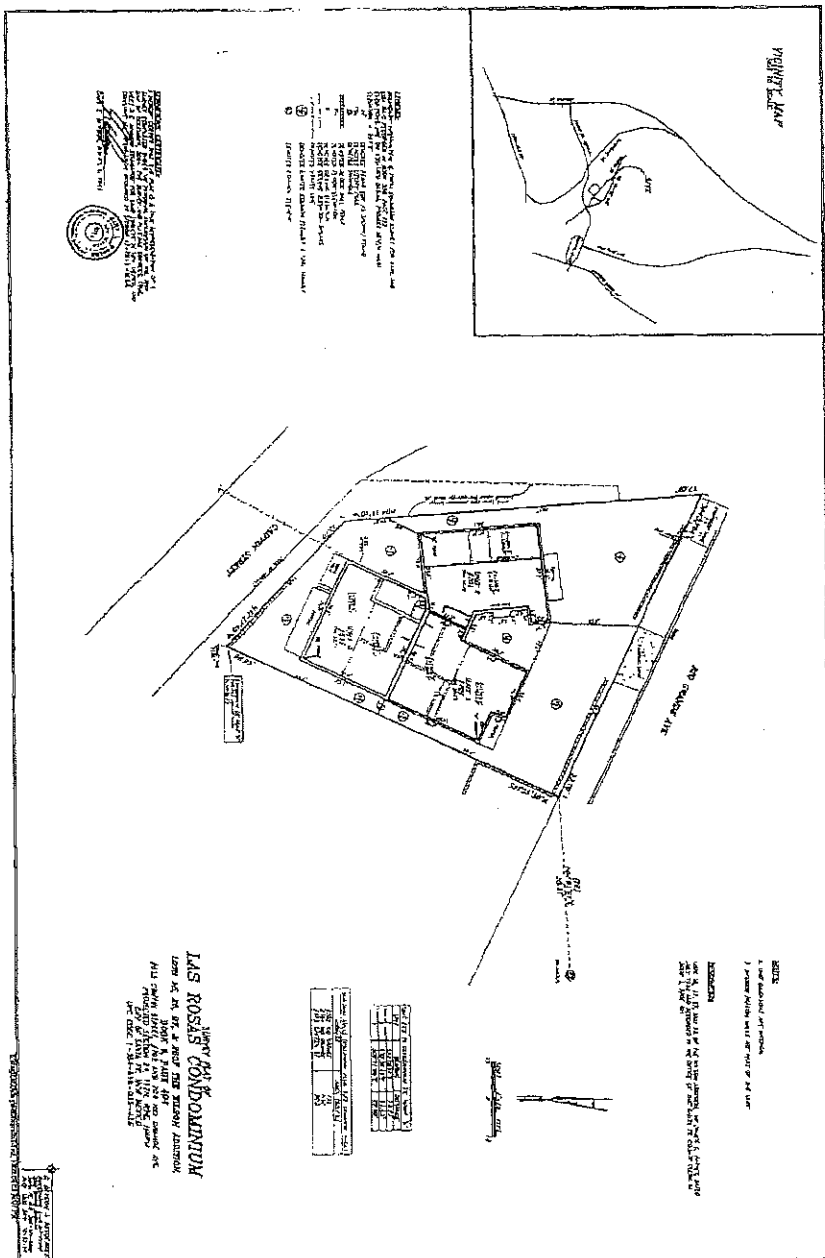


Exhibit "A"