



**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
35 NORTH SUBDIVISION,  
RIO RANCHO, NEW MEXICO**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS and RESTRICTIONS for 35 NORTH SUBDIVISION (hereinafter the "Declaration") is made as of the 8<sup>th</sup> day of July, 2019, by Enchanted Hills Development Company, LLC, a New Mexico limited liability company (hereinafter the "Declarant").

**WITNESSETH:**

Declarant is the owner of that certain real property located in the County of Sandoval, State of New Mexico, legally described in **Exhibit "A"** attached hereto (the "Property") and incorporated herein by reference which is to be commonly known as "35 North".

Declarant desires to develop the Property into a planned community of single-family residential homes.

Declarant plans to convey portions of 35 North to the 35 North Homeowners Association, Inc., a New Mexico nonprofit corporation legally described in **Exhibit "B"** attached hereto (the "HOA Tracts").

As part of the various stages of development of the Property, Declarant intends, without obligation, (i) that portions of the Property may be dedicated to the public for streets, roadways, parks, drainage flood control and other public use, and (ii) that Lots within the Property may be sold or otherwise conveyed to Builders for the construction and sale of single-family homes.

Declarant also desires to form a nonprofit corporation for the purpose of benefiting the Property, the Owners and the Residents, which nonprofit corporation (hereinafter the "Association") may (i) acquire, operate, manage and maintain any Common Areas in the Property (ii) establish, levy, collect and disburse the Assessments and other charges imposed hereunder, and (iii) as the agent and representative of the Members of the Association and of the Owners, and the Residents of the Property, administer and enforce this Declaration.

In order to cause the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively the "Covenants") to run with the Property and to be binding upon the Property and all Owners and Residents thereof, and their successors and assigns, from and after the date of the Recording of this Declaration, Declarant hereby declares that all conveyances of the Property shall be subject to the Covenants herein set forth.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

**ARTICLE 1**  
**DEFINITIONS**

The following words, phrases or terms used in the Declaration shall have the following meanings:

**"Affiliate"** of a Person shall mean a Person that controls, is controlled by, or is under common control with such other Person.

**"Annual Assessment"** shall mean the Assessments imposed for annual expenses pursuant to Article 8.

**"Architectural Committee"** shall mean the committee to be created pursuant to this Declaration.

**"Architectural Committee Rules"** shall mean the rules adopted by the Architectural Committee from time to time governing the approval of architectural design and construction.

**"Areas of Association Responsibility"** shall mean (a) all Common Area; (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot, Tract, easement benefiting the Association or a public right-of-way or park which the Association is obligated to maintain, repair, and replace pursuant to the terms of the Declaration or other Recorded document executed by the Declarant or the Association.

**"Articles"** shall mean the Articles of Incorporation of the Association as the same may be amended or supplemented from time to time.

**"Assessment"** shall mean the charges levied and assessed each year against each Membership pursuant to **Article 8** hereof.

**"Assessment Lien"** shall mean the lien created and imposed by **Article 8**.

**"Assessment Period"** shall mean the period set forth in **Article 8**.

**"Association"** shall mean the New Mexico nonprofit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration. Declarant hereby reserves the exclusive right to cause such Association to be incorporated. It is the intent of the Declarant that the Association shall be named the "35 North Homeowners Association, Inc."

**"Association Maintained Areas"** shall mean all of the Common Areas and any public rights-of-way or portions thereof which are required by the City of Rio Rancho or Sandoval County to be maintained by the Association. The Association may elect to maintain other public or non-public areas at their discretion in order to fulfill the intent of this Declaration.

**"Board"** shall mean the Board of Directors of the Association.

**"Builder"** shall mean an Owner which is in the business of construction and selling completed Dwelling Units to third parties and which intends to construct and sell Dwelling Units on the Lots it owns. In the case of any Lots within the Property which are owned by a Person who holds title to the Lots in the capacity of a land banker and who has entered into a purchase agreement with a Person who would be a Builder if such Person owned the Lots (a "Land Banking Agreement"), then such Lots shall be deemed to be owned by a Builder under this Declaration.

**"Bylaws"** shall mean the Bylaws of the Association as the same may, from time to time, be amended or supplemented.

**"Capital Improvements"** shall mean those items owned, repaired or maintained by the Association which individually have a life expectancy of three (3) years or greater and exceed \$1,000.00 or greater in value. Items of a like structure which are less than \$1,000.00 when all such items are multiplied by the single value of one like item shall be considered a Capital Improvement.

**"Common Area"** shall mean (a) any and all real property and land areas described as "Common Area" herein or in any amendments to these Covenants; (b) Tracts, land areas and easements designated as "Common Area" or as "HOA Tract" on any recorded plats within 35 North Subdivision, according to said plat recorded in Sandoval County, New Mexico, together with all Improvements situated thereon; (c) all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest; and (d) land within a recorded or legally granted easement accepted by the Association whereby the Association holds the dominant tenancy allowing for improvements and maintenance by the Association, except that Common Area shall **not** include any Lot the Association acquires by the foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

**"Common Expenses"** shall mean the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including any allocations to reserves determined by the Board to be necessary and appropriate, and all other financial liabilities of the Association.

**"Community Documents"** shall mean collectively, this Declaration, the Bylaws, the Articles and the Architectural Committee, as amended or restated from time to time, and adopted by the Association.

**"Construction"** shall mean any devegetation, excavation or grading work of the construction, erection or installation of an Improvement on a Lot which would be visible from neighboring property.

**"Covenants"** shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements set forth in this Declaration.

**"Declarant"** shall mean and refer to the above recited Declarant and/or any Person or Persons to whom all or a portion of the declarant's rights reserved to the Declarant under this Declaration and its amendments are assigned pursuant to a written, recorded instrument expressly assigning such rights.

**"Declarant Control Period"** shall mean the period commencing upon the Recording of this Declaration and ending on the latest date allowed by New Mexico Homeowner Association Act (Chapter 47, Article 16 NMSA 1978) or the date that the Declarant conveys the last Lot to a Purchaser so that the Declarant no longer owns any Lot in the Property, whichever occurs first.

**"Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions, as amended from time to time.

**"Deed"** shall mean a Deed or other instrument conveying the fee simple title in any portion of the Property from one Owner to another Owner.

**"Deficiency Assessments"** shall mean Assessments paid by Declarant and/or Builders pursuant to the provisions of **Section 8** below:

**"Design Guidelines"** shall mean the architectural procedures, standards, and guidelines contained in this Declaration as interpreted and enforced by the Architectural Committee.

**"Dwelling Unit"** shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

**"Exempt Property"** shall mean the following parts of the Property: (i) all land and improvements owned by or dedicated to and accepted by the United States of America, the State of New Mexico, Sandoval County, the City of Rio Rancho or any other political subdivision, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective; (ii) all Common Areas, for as long as the Association is the Owner thereof, and (iii) all Tracts.

**"First Mortgage"** shall mean a deed of trust or mortgage Recorded against a Lot which has priority over all other deeds of trust or mortgages Recorded against the same Lot.

**"HOA Tract"** shall mean a designation for land areas in master plans, subdivision plats, deeds, leaseholds or easements intended for Common Area as defined herein, including but not limited to the lands described in Exhibit B attached hereto.

**"Improvement"** shall mean: (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball goal, backboard or apparatus, or playground equipment; (c) any road, driveway, or parking area; (d) any trees, plants, shrubs, grass, or other landscaping improvements of any type and kind; (e) any statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, (f) any subsurface communication, irrigation, pipeline or other conduit and apparatus under ownership of the Association; and (g) any other structure of any type, kind or nature.

**"Lot"** shall mean any part of the Property designated as a distinct premise intended for residential occupancy without requiring further land division on any Recorded Plat with respect to any portion of the Property and, where the context indicates or requires, any Improvements constructed from time to time thereon.

**"Maintenance"** shall mean care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement, and reconstruction.

**"Maintenance Charges"** shall mean any and all costs assessed pursuant to **Article 12** hereof.

**"Maintenance Standard"** shall mean the standard of Maintenance of Improvements situation on Lots established from time to time by the Board or, in the absence of any standard established by the Board, the standard or Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

**"Member"** shall mean any Person holding a Membership in the Association pursuant to this Declaration.

**"Membership"** shall mean a Membership in the Association and the rights granted to the Owners pursuant to **Article 7** hereof to participate in the Association.

**"Modification"** shall mean an addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot that is Visible From Neighboring Property.

**"Owner"** shall mean (when so capitalized) the Record holder of legal title to the fee simple interest in any Lot, but excluding those who hold such title merely as a security for the performance of an obligation. In the case of any Lot the fee simple title to which is vested of Record in a seller under a valid, recorded and outstanding Real Estate Contract, the Owner shall be deemed to be in the purchaser under such Real Estate Contract. In the case of any Lot the fee simple title to which is vested of Record in a trustee, the Owner shall be deemed to be in the trustee. An Owner shall include any Person who holds Record title to any Lot in joint ownership with any other Person or who holds an undivided fee interest in such Lot.

**"Person"** shall mean a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

**"Plat"** shall mean any subdivision plat Recorded with respect to any portion of the Property.

**"Property"** shall mean the real property legally described in **Exhibit "A"** attached hereto and incorporated herein by this reference, together with all Improvements constructed thereon from time to time.

**"Purchaser"** shall mean any Person, other than the Declarant, who becomes the Owner of a Lot, except for: (a) a Person, who purchases a lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

**"Record," "Recording" or "Recordation"** shall mean placing an instrument of public record in the office of the County Clerk of Sandoval County, New Mexico, and "Recorded" shall mean having been so placed of public record.

**"Regular Assessment"** shall mean the Assessments levied pursuant to **Article 8**.

**"Residence"** shall mean any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

**"Resident"** shall mean each natural person legally occupying or residing in a Dwelling Unit.

**"Rules"** shall mean the rules adopted by the Board.

**"Special Assessment"** shall mean any Assessment levied and assessed pursuant to this Declaration hereof.

**"Tract"** shall mean any portion of the Property which is subdivided as a separately divisible parcel of real property pursuant to a Plat, whether or not designated on the Plat as a "Tract", "Parcel", or other designation, but is not a Lot.

**"View Fence" or View Corridor"** shall mean that portion of any party wall or fence adjacent to Common Property purposefully constructed for preserving an open or partially open view through such wall or fence. Said view corridors are established by the Architectural Committee upon their plan approval and they shall not be obstructed by any owner without consent of the Association.

**"Visible From Neighboring Property"** shall mean, with respect to any given object, that such object is, or would be, visible to a Person six feet (6') tall, standing on the same plane as the object being viewed at a distance of one hundred feet (100') or less from the nearest boundary of the property being viewed.

## **ARTICLE 2**

### **PLAN OF DEVELOPMENT**

#### **2.1 General Declaration Creating the Property.**

Declarant intends that the Property be developed, used and enjoyed in accordance with and pursuant to each Plat by subdividing the Property into Lots and Tracts and selling and conveying Lots to Builders for the purpose of the construction and sale of Dwelling Units thereon to third parties. All Lots and Tracts within the Property shall be held, conveyed, hypothecated, encumbered, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, as amended or modified from time to time; provided, however, that such portions of the Property which are dedicated to the public or a governmental entity for public purposes shall not be subject to this Declaration or the Covenants herein contained while owned by the public or the governmental entity, although any restrictions imposed in this Declaration upon the Owners or the Residents concerning the use and maintenance of such portion or portions of the Property shall at all times apply to the Owners and the Residents. This Declaration is declared and agreed to be in furtherance of a master plan for the subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and Residents and their successors in interest. By acceptance of a Deed or by acquiring any interest in any portion of the Property, each Person, for himself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees, and assigns to all of the Covenants now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a master plan for the development, sale, and use of the Property and hereby evidences his interest that all Covenants contained in this Declaration shall run with the land and be binding upon all subsequent and future owners, grantees, purchasers, assignees, tenants, and transferees thereof. Each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns, and grantees, covenant and agree that the Lots, Tracts, Memberships in the Association and the other rights appurtenant to such Lots and Tracts shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Tract even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Tract.

#### **2.2 Association Bound:**

Upon issuance of a Certificate of Incorporation by the New Mexico Secretary of State to the Association, the Covenants shall be binding upon and shall benefit the Association.

### **2.3 Disclaimer of Representations:**

Notwithstanding anything to the contrary herein, the Declarant makes no warranty or representation whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out or that the Property is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable, the Declarant makes no warranty or representation as to the present or future validity, or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Tract in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a Deed to a Lot or Tract agrees that neither the Declarant nor any Builder shall have any liability with respect thereto.

## **ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS**

### **3.1 Easements for Use of Common Areas.**

Declarant and every Owner and Resident of the Property shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to, and shall pass with, the title to every Lot and Tract subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other Special Use Fees for the use of the Common Areas or any facilities constructed thereon.
- (b) The right of the Association to suspend the voting rights; right to use of the facilities and other Common Areas by any Member; and any other rights incidental to Membership (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration or the Rules, and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period; provided, however, that a Member's rights may only be suspended under procedures sufficient to comply with applicable law.
- (c) The right of the Association to regulate the Common Areas through the Rules and to prohibit or limit access to certain Common Areas, such as specified landscaped areas. The Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas for the safety and convenience of the users thereof and otherwise shall serve to promote the best interests of the Owners and Residents.
- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any entity for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument signed by the Declarant (so long as the Declarant owns any Lots within the Property) or the Members holding at least two thirds (2/3) of the Memberships in the Association agreeing to such dedication or transfer has been Recorded. In addition, if ingress and egress to any Lot is provided through the Common Area, then any dedication or transfer of such Common Area shall be subject to such Lot Owner's continuing right and easement for ingress and egress.
- (e) The right of the Association to change the use of the Common Areas in accordance with this Declaration.
- (f) The right of the Association to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas, and to abandon or otherwise transfer Common Areas so long as, in each case, either (i) the Board determines that the Members are not materially or adversely affected, or (ii) Members holding at

least two-thirds (2/3) of the Membership in the Association have executed an instrument agreeing to such change in size, shape or location, exchange, abandonment, or transfer.

### **3.2 Easement to Facilitate Development.**

Declarant hereby reserves to itself and each Builder, their successors and assigns and to its contractors, subcontractors, suppliers, engineers, architects, and agents a non-exclusive blanket easement over and through the Property, including without limitation: (a) the construction of all Improvements on the Common Area which Declarant deems necessary; (b) the construction of residences and other improvements on Lots; and (c) the storage of supplies of building materials and equipment necessary to construct Improvements on the Common Area and the Lots.

The Declarant hereby reserves to itself and each Builder, their successors and assigns the right to: (a) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices, or sales office parking areas; and (b) install and maintain on the Common Area, any Lot owned or leased by the Declarant, or any other Lot with the consent of the Owner thereof, such marketing promotional or other signs which the Declarant deems necessary for the development, sale, or lease of the Property or any other property owned by the Declarant. So long as the Declarant or a Builder is selling and/or marketing the Property (or any other property owned by the Declarant), the Declarant shall have the right to restrict the use of parking spaces situated on the Common Area and to reserve such parking spaces for use by prospective Purchasers of Lots, the Declarant's contractors, subcontractors, suppliers, agents, employees, or other Persons engaged in sales, marketing, or construction activities for or on behalf of the Declarant.

Neither the Declarant nor any Builder shall exercise any of the rights or easements reserved by or granted pursuant to this **Section 3.2** in such a manner as to unreasonably interfere with the construction, development, or occupancy of any construction activities for or on behalf of the Declarant.

### **3.3 Utility Easements.**

A nonexclusive, perpetual blanket easement is hereby created over and through the Common Areas and a limited specific easement over and through those portions of the Property shown as public utility easement areas on any Plat is hereby created, for the purpose of:

- (a) Installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Property any utilities, including, without limitation, water, sewer, drainage, gas, electricity, telephone, communication and television service, whether public or private;
- (b) Ingress and egress to install, construct, operate, maintain, repair and replace such equipment; and
- (c) Exercising the rights under the easement.

Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing, or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers, and any other apparatus necessary for the provision or metering of any utility may be installed or relocated only where permitted by the Declarant or any Builder, where contemplated on any Plat, or where approved by resolution of the Board. Equipment used to provide or meter such utilities or services may be installed aboveground during periods of construction if approved by the Declarant and any Builder. The Person providing the service or installing a utility pursuant to this easement shall install, construct, maintain, repair, or replace the equipment used to provide or meter utilities as promptly and expeditiously as possible, and shall restore the surface of the land and the improvements situated thereon to their original condition as soon as possible.

### **3.4 Easement for Maintenance of Common Areas and Areas of Association Responsibility.**

The Association shall have an easement upon and over the Common Areas and Areas of Association Responsibility for the purpose of maintaining the landscaping and drainage facilities within such areas pursuant to

the provisions of the Declaration. The easement provided in the foregoing shall terminate with respect to any Common Area on the date the Association's responsibilities with respect to maintaining the landscaping or drainage facilities within any such Common Area or Area of Association Responsibility terminates.

### **3.5 Easements for Encroachments.**

If any Improvement constructed by or for a Builder or Declarant on any Lot or Tract now or hereafter encroaches on any other portion of the Property by an amount of deviation permitted by customary construction tolerances, a perpetual easement is hereby granted to the extent of any such encroachment, and the owner of the encroaching Improvement shall also have an easement for the limited purpose of the maintenance and repair of the encroaching Improvement.

### **3.6 Delegation of Use.**

Any Member may, in accordance with this Declaration and the Rules and the limitations therein contained, delegate his right of enjoyment in the Common Areas and facilities to the members of his family, or his Residents.

### **3.7 Drainage Detention, Retention and Conveyance Easements.**

Certain portions of the Property, including certain specified Lots, may contain drainage conveyance, detention or retention swales and basins thereon for the benefit of other portions of the Property. In connection therewith, each Owner who acquires a Lot subject to a drainage conveyance, retention or detention easement shall be responsible for maintaining such easement and the swale or basin thereon in good condition and repair, and without obstruction, such that the purposes for which such drainage conveyance or basin has been established are appropriately served.

### **3.8 Dedications and Easements Required by Governmental Authority.**

The Declarant hereby reserved to itself and its successors and assigns, the right to make any dedication and to grant any easements, right-of-way, and license required by any government or governmental agency over and through all or any portion of the Common Area or Areas of Association Responsibility.

### **3.9 Further Assurances.**

The easements granted and reservation made to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all the Property by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time, sign, acknowledge, and deliver to the Declarant such documents or instruments deemed necessary by the Declarant to evidence or confirm the reservation or grant of rights and easements to the Declarant under this Declaration.

### **3.10 Assignment of Development Rights.**

The Declarant may make limited temporary assignment of its easement rights under this Declaration to any Person performing construction, installation, or Maintenance on any portion of the Property. Any such assignment shall be in writing.

### **3.11 Easement for Maintenance and Enforcement.**

The Association and its directors, officers, agents, contractors, employees, the Architectural Committee, and any other Persons authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any residence) for: (a) the exercise and discharge of their respective powers and responsibilities under the Community Documents; (b) making inspection in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are being properly maintained as required in the Community Documents; (c) correcting any condition originating in a Lot or in the Common Area threatening



another Lot or the Common Area; (d) performing installation or Maintenance of utilities, landscaping or other Improvements located on the Lots for which the Association is responsible for Maintenance; or (e) correcting any condition which violates the Community Documents.

## **ARTICLE 4**

### **PERMITTED USE AND RESTRICTIONS**

#### **4.1 Residential Purposes**

All Lots and Dwelling Units within the Property zoned by the City of Rio Rancho, New Mexico for residential use shall be used solely for single-family residential purposes. No gainful occupation, profession, business, trade, or other nonresidential use shall be conducted on or in any Dwelling Unit, provided that an Owner or any Resident may conduct limited business activities in a Dwelling Unit so long as (a) the existence and operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve door-to-door solicitation of other Owners or Residents; (d) the business activity does not generate drive-up traffic or customer or client parking; and (e) the business activity is consistent with the residential character of the Property, does not constitute a nuisance or a hazardous or offensive use and does not threaten the security or safety of other Owners or Residents, as may be determined in the sole discretion of the Board. No Lot will ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; provided, however, that the Declarant and each Builder, and their perspective agents, successors, or assigns, may use the Property, including any Lots, for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Dwelling Units thereon, including, without limitation, for the purposes of a business office, management office, storage area, construction yard, signage, model sites and display, and sales office during the construction and sales period. The Board shall have broad authority to enact rules and regulations to implement this **Article 4**, and to exempt or make specific exemptions for a particular Dwelling Unit on a case-by-case basis.

#### **4.2 Animals.**

No animal, bird, poultry or livestock may be kept on any Lot, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot, and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have authority to determine what is a reasonable number of generally recognized house or yard pets for any particular Lot, and the Board's determination shall be final. All house or yard pets permitted under this Section shall be confined to an Owner's Lot; except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash and is not permitted to enter upon any other Lot. Any Person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area or Area of Association Responsibility on which dogs are permitted.

No animal, bird, poultry or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, poultry or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein and in this Declaration. So long as the Declarant or any Builder owns one or more lots, the Declarant may adopt such rules and regulations relating to animals permitted and maintained on the Property. Thereafter, the Board may adopt such rules and regulations relating to animals permitted and maintained on the Property.

#### **4.3 Temporary Occupancy and Temporary Building.**

No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary

buildings, trailers, or structures may be used during the construction of a Dwelling Unit on any Lot provided that they shall be removed immediately after the completion of construction. In no event shall any such buildings, trailers, or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Board. This Section shall not prevent the Declarant's use or Builders' use of a sales trailer on the Common Area or any Lot owned by the Declarant or Builder.

#### **4.4 Diseases and Insects.**

No owner shall permit any thing or condition to exist upon any Lot or Tract which shall induce, breed or harbor infectious plant diseases or noxious insects.

#### **4.5 Antennas.**

Subject to applicable law, no antenna, aerial, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radio) signals of any kind (collectively referred to herein as "antennas") will be allowed outside any Dwelling Unit, except:

- (a) those antennas whose installation and use is protected under federal law or regulations (generally, certain antennas under one meter in diameter), provided that an application for such an antenna must be submitted to the Architectural Committee and such application will be approved only if: (i) the antenna is designed to assure the minimal visual intrusion possible (i.e., is located in a manner that minimizes visibility from any street); and (ii) the antenna complies to the maximum extent feasible with the Rules within the confines of applicable federal regulations (i.e., without precluding reception of quality signal, of unreasonably increasing the cost of the antenna); or
- (b) antenna dishes 18" in diameter or smaller mounted in a location in the rear or side of the home on a pole or on the home itself.

Any transmission cable for a receiver to any Dwelling Unit must be underground. The restrictions in this **Section 4.5** shall be subject to any limitations imposed by law. The Board is hereby vested with the broadest discretion to enact rules and regulations to implement this Article to conform to applicable state and federal law, provided, however, that the Board may enact rules and regulations that are more restrictive than this **Section 4.5**, if permissible by state and federal law.

#### **4.6 Mineral Exploration**

No Lot or Tract shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth substance of any kind.

#### **4.7 Trash Containers and Collection.**

No garbage or trash shall be placed or kept on any Lot or Tract, except in covered containers of a type, size and style which are approved by the Board and service provider. The Board may adopt such reasonable rules and regulations as it deems necessary regarding trash containers and collection of trash and except on a temporary basis during any period of construction of Improvements on any Lot or Tract. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available on days of collection only. All rubbish, trash, or garbage shall be promptly removed from all Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or Tract.

#### **4.8 Clothes Drying Facilities.**

Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot or Tract unless they are erected, placed, and maintained exclusively within a fenced service yard or otherwise concealed and are not Visible From Neighboring Property.

#### **4.9 Party Walls.**

Except as hereinafter provided, the rights and duties of Owners with respect to party walls or party fences between Lots, or between Lots and Common Areas, shall be as follows:

Each wall which is located on or near the boundary between two Lots shall constitute a party wall, and to the extent not inconsistent with the Section, the general rules of law regarding party walls shall apply.

The owners of contiguous Lots who share a party wall shall both have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. Except as otherwise provided in this Section, the Owners of congruous Lots who share a party wall shall each pay one-half (1/2) of the cost of any maintenance, repair, or replacement of the party wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the party wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for one-half (1/2) of the reasonable cost thereof. In the event the two affected Owners cannot agree that any repair or maintenance is necessary or warranted, such Owners shall submit the dispute to the Architectural Committee for a final decision. In the event that any party wall is damaged or destroyed through the negligence or willful act or omission of any Owner, his agents, tenants, licensees, guests, or family, it shall be the obligation of such Owner to rebuild and repair the party wall without cost to the other Owner or Owners who share the party wall.

The right of any owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to, or rebuild a party wall shall first obtain the written consent of the adjoining Owner.

In the event any party wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the party wall shall and does exist in favor of the Owner of the Lots which share the party wall.

The Declarant hereby reserves to itself and its successors and assigns a perpetual, non-exclusive easement over, under, upon and across the Lots for the purpose of repairing or relocating a party wall without the consent of the Owners who share the use of the party wall.

Notwithstanding to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein whether by way of easement or in fee.

The Association shall have the right, but not the obligation, to perform any work which and Owner or Owners fail to do in a timely manner. The Owner(s) responsible for such work shall upon demand pay all costs incurred by the Association together with interest at twelve percent (12%) per annum and an administrative fee at ten percent (10%) of the amount incurred by the Association.

If a dispute occurs between Owners regarding a Party Wall or the sharing of the cost thereof, such Owner shall submit the dispute to the Board, whose decision shall be binding and cannot be appealed. Notwithstanding any such decision, no Owner is prohibited from seeking indemnity from the party causing the damage.

Notwithstanding anything contained herein to the contrary, walls or fences constructed by the Declarant, any Builder, or the Association on Common Areas where the wall or fence does not border on a Lot shall be maintained by the Association. Subject to the provisions of this Declaration, except that each Owner of a Lot shall be responsible for stucco or painting the portion of the party wall or party fence facing his Lot or the portion thereof which is not a portion of the Common Area.

#### **4.10 Overhead Encroachments**

No tree, root, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, party wall, Common Area, or other Lot from ground level to a height of eight feet (8') without the prior approval of the Architectural Committee.

#### **4.11 Window Coverings**

Within ninety (90) days of the initial conveyance of a Lot with a Residence constructed thereon, to an Owner from the Declarant or a Builder (or by trustee, for the benefit of the Declarant or Builder), the Owner or Resident of the Lot shall install permanent window coverings. In no event shall the interior or exterior of any windows be covered with reflective material such as foil, or with paper, bed sheets, or other temporary coverings. The Board shall have the broadest authority to enact rules and regulations relating to window coverings.

#### **4.12 Garages and Driveways.**

No garage shall be converted to living space or altered or used for storage of material or other purposes which would prevent the use of the garage for the parking of at least two motor vehicles, except that the Declarant or a Builder may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages situated upon any Lot shall be maintained by the respective Owners thereof in a neat and clean condition. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or Persons. All driveways on Lots shall be of concrete construction.

#### **4.13 Heating, Ventilating, Air Conditioning Units, and Other Equipment**

No heating, air conditioning units, evaporative cooling units, or equipment shall be placed, constructed or maintained upon the Property, including, but not limited to, upon the roof or exterior walls of any structure on any part of the Property unless: (a) where such unit or equipment is installed upon the roof of any structure upon the Property, such unit or equipment is fully screened from view from any adjacent Lots by a parapet wall which conforms architecturally with such structure or (b) in all other cases, such unit or equipment is attractively screened or concealed and is not Visible From Neighboring Property.

#### **4.14 Solar Collection Panels or Devices.**

Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power for residential use. At the same time, Declarant desires to promote and preserve the attractive appearance of the Property and the improvements thereon, thereby protecting the value generally of the Property and the various portions thereof, and of the various Owners' respective investments therein. Therefore, subject to prior approval of the plans therefore by the Architectural Committee, such approval to be subject to the restrictions of applicable law, solar collecting panels and devices may be placed, constructed or maintained upon any Lot within the Property (including upon the roof of any structure upon any Lot), so long as either:

- (a) such solar collecting panels and devices are placed, constructed and maintained so as not to be Visible From Neighboring Property; or
- (b) such solar collecting panels and devices are placed, constructed and maintained in such locations(s) and with such means of screening or concealment as to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed by a Person six feet (6') tall standing at ground level on adjacent properties. The restrictions in this **Section 4.14** shall be subject to any limitations imposed by law.

#### **4.15 Basketball Goals.**

Portable basketball goals and backboards mounted on the Dwelling Unit are prohibited. Only pole mounted permanently installed basketball goals are allowed. The Board may adopt such rules and regulations as it deems appropriate relating to the construction, placement, and use of the basketball goals or similar structures or devices.

#### **4.16 Vehicles.**

As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus truck, motorcycle, all terrain vehicle, pickup truck, or other motor vehicle; and (b) "Street" means each public or private street shown on the Plat.

No bus, mobile home, motor home, travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational vehicle, or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No bus, mobile home, motor home, travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational vehicle, or other similar equipment may be parked, kept, or stored on any Lot so as to be Visible From Neighboring Property.

No Motor Vehicle which exceeds eight feet (8') in height or exceeds twenty-four feet (24') in length or which is designed or used for carrying merchandise, supplies, or equipment of commercial purposes shall be parked on a Street or on a driveway or any other part of a Lot so as to be Visible From Neighboring Property, except for: (a) the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers, or vendors of the Association or of an Owner, Lessee, or Resident, and (b) the parking for not more than seventy-two (72) hours within any seven (7) day period of recreational vehicles, motor homes, and similar vehicles owned or leased by an Owner, Lessee, or Resident in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board. No Motor Vehicle of a contractor, subcontractor, supplier of vendor or an Owner, Lessee or Resident shall be parked overnight on a Lot, a Street, or the Common Area. No Motor Vehicle shall be parked on any part of the Common Area other than a Street or designated parking spaces.

All terrain vehicles must be kept in garages or in another part of the Lot which is not Visible from Neighboring Property. No Motor Vehicle owned or leased by an Owner, Lessee, or Resident of a Lot or their guests may be parked on a Street if space for the parking of the Motor Vehicle is available in any of the following areas: (a) the garage or carport situated on the Lot of the Owner, Lessee, or Resident; (b) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot by the Declarant or Builder; or (c) a driveway expansion constructed on the Lot with the written approval of the Architectural Committee.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area or Area of Association Responsibility. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp, or other material. Motor Vehicles owned by guests of an Owner, Lessee, or other Resident may be parked in the driveway on a Lot or on the Streets or in designated parking spaces on the Common Area.

Notwithstanding any other provision of this Section to the contrary, no Motor Vehicle may be parked on a driveway if the length of the Motor Vehicle exceeds the length of the driveway or if the Motor Vehicle encroaches upon or obstructs access across the sidewalk or curb adjacent to the driveway.

The provisions of this **Section 4.16** shall not apply to vehicles of Declarant, any Builder or its respective employees, agents, affiliates, contractors or subcontractors during the course of construction activities upon or about the Property. The Association shall have the right to tow any motor vehicle or trailer, including, without limitation, any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment, or vehicle or any automobile, motorcycle motorbike, all-terrain vehicle or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration or the Rules at the cost and expense of the Owner of the Lot from which such vehicle or related trailer or equipment was towed, or the owner of the vehicle or equipment in question if such vehicle or equipment is towed from any Common Area. The cost incurred by the Association in towing any vehicle, trailer, or related equipment from any Lot shall be payable by the Owner of such Lot on demand by the Association and shall be secured by the Assessment Lien.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

#### **4.17 Landscaping and Maintenance; Reconstruction.**

Within ninety (90) days of acquiring a Lot with a Dwelling Unit thereon, each Owner (other than Declarant or any Builder) shall landscape (if not already landscaped) such Lot and any public right-of-way areas (other than sidewalks or bicycle paths) lying between the front or side boundaries of such Lot and any adjacent street and, if such Lot has a "view fence", then between the back boundary of such Lot and such view fence. Each Owner

shall submit a landscaping plan to the Architectural Committee for review and approval pursuant to this Declaration. Each Owner shall maintain the landscaping on such Owner's Lot and any public right-of-way areas lying between the front or side boundaries of such Lot and an adjacent street and shall keep the land free of debris and weeds at all times and promptly repair portions of the landscaping which have been damaged. Landscaping shall be installed under this **Section 4.17** as to be consistent in terms of general appearance and level of care and attention, with other normal completed residential landscaping within the Property and with other residential properties in the vicinity of the Property and in accordance with rules and guidelines established by the Architectural Committee. Each Owner shall maintain the aforementioned landscaping and exterior of the Owner's Dwelling Unit in a neat, clean, and attractive condition consistent in appearance with other properly maintained, improved Lots within the Property. In the event any such landscaping is damaged or disturbed as a result of the installation or maintenance of any utility lines, cables, or conduits for the use or benefit of the Owner of the Lot, then, in that event, such Owner shall promptly repair and restore any damage or disturbance to such landscaping in accordance with the landscape plans previously approved by the Architectural Committee. In the event any Dwelling Unit or other structure is totally or partially damaged or destroyed by fire, Act of God, or any other cause, the Owner shall fully repair the damage and complete reconstruction of the Dwelling Unit or other structure within eighteen (18) months after occurrence of the damage or destruction. The provisions of this **Section 4.17** shall not apply to any Lot or Tract owned by Declarant or any Builder.

#### **4.18 Prohibited Uses.**

No use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation, or pollution, or which constitutes a nuisance or unreasonable source of annoyance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner shall be permitted on any Lot. No use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of New Mexico, Sandoval County, the City of Rio Rancho or any other governmental entity having jurisdiction over the Property shall be conducted on any Lot.

#### **4.19 Dust Control.**

The areas on each Lot which are not improved with buildings ("Clear Areas") shall be landscaped as provided in **Section 4.17**. After a sale of any Lot by Declarant or any Builder until such landscaping is installed, the Clear Areas shall be maintained in a neat and attractive condition, free of weeds and debris, and the Owner thereof shall take necessary and appropriate measures to prevent and control the emanation of dust and dirt from the Clear Areas, which may include the use of gravel, grass, ground cover or the sealing of the ground surface. After landscaping has been installed, each Owner shall continue to maintain his Lot in a manner which minimized the possibility of dust being transmitted into the air and over adjacent properties.

#### **4.20 Nuisances; Construction Activities.**

No rubbish or debris of any kind shall be placed or permitted to accumulate upon any portion of the Property or on any Lot for any time, and no odors shall be permitted to arise or emit there from, so as to render the Property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive, or detrimental to any other portion of the Property in the vicinity thereof or to its Owners or Residents. No condition shall be permitted to exist or operate upon any Lot or other portion of the Property so as to be offensive or detrimental to any other property in the vicinity thereof or to its Owners or Residents. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind. No Person shall permit any thing or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects. No loud, noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become an annoyance or nuisance to Persons or property in the vicinity of such Lot, or which shall interfere with the quiet enjoyment of each of the Owners or Residents.

Normal construction activities and parking in connection within the building or Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by the Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber, and other building materials will be piled only in such areas as may be approved in writing by the

Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The provisions of this Section shall not apply to construction activities of the Declarant or a Builder or their respective employees, Affiliates, contractors, or subcontractors during the course of construction activities or sales activities upon or about the Property.

In the event any portion of any Lot or Tract is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Tracts, or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration, or in the event any Builder or Owner of any Lot or Tract is failing to perform any of its obligations under this Declaration or the Rules, or any Builder who is performing construction, who does not appropriately clean up construction materials on a daily basis in a reasonable manner, the Board may, by resolution, make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Builder or Owner that unless corrective action is taken within fourteen (14) days, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective actions or bringing suit to compel the offending Builder or Owner to undertake such corrective action) and the cost thereof, together with any attorney's fees expended by the Association in connection therewith, shall be added to, and become a part of the Assessment to which the offending builder or Owner and the Builders or Owner's Lot or Tract is subject, if any.

The Board shall have the right to determine in its sole discretion, whether the provisions of this **Section 4.20** have been violated. Any decision rendered by the Board shall be enforceable and shall be binding in the same manner as other restrictions in this Declaration.

#### **4.21 Drainage**

No Owner or Resident or other Person shall obstruct, divert, alter or interfere with the drainage established for any portion of the Property by Declarant or any Builder. No Owner or Resident or other Person shall obstruct, divert, alter or interfere in any way with the drainage of ground and surface water upon, across, or over any portion of the Lots, Tracts, rights of way, Common Area(s), Areas of Association Responsibility, or other portions of the Property, including, but not limited to, construction or installation of any type of structure or vegetation. Each Owner shall, at its own expense, maintain the drainage ways and channels on its Lot or Tract in proper condition free from obstruction. The Association shall have the right but not the obligation, after ten (10) days notice to an Owner, except in the case of emergency (in which case the Association shall have an immediate right of access), to repair or otherwise maintain the drainage way or channel on said Owner's Lot or Tract, which the Association, acting through the Board of Directors, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses, including, but not limited to, reasonable attorneys' fees and costs incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment, subject to lien, and collected in like manner as Assessments levied pursuant to this Declaration. For the purpose of this clause, "drainage" means the drainage that exists at the time the overall grading of Lots, Tracts, rights-of-way, and Common Area(s) were completed by the Declarant or any Builder in accordance with plans approved by the City of Rio Rancho or the Southern Sandoval County Arroyo Flood Control Authority.

#### **4.22 Health, Safety and Welfare.**

In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety, or welfare of Owners and Residents, the Board may make rules restricting or regulating their presence on the Lot or Tract as part of the Rules.

#### **4.23 Leasing Obligations of Tenants and Other Occupants.**

All tenants shall be subject to the terms and conditions of the Declaration, the Articles, the Bylaws, and the Rules. Each Owner shall cause his, her or its Residents or other occupants to comply with this Declaration, the Articles, the Bylaws, and the Rules and, to the extent permitted by applicable law, shall be responsible and liable for all

violations and losses caused by such Residents or other occupants, notwithstanding the fact that such Residents or other occupants are also fully liable for any violation of each and all of those documents. No Owner may lease less than his, her, or its entire Lot. No Lot may be leased for a period of less than three (3) consecutive months. Each Owner who rents a Lot or his Dwelling Unit thereon is required to advise the Board within fifteen (15) days of the effective date of the lease therefore. The Owner is required to furnish the Board with a copy of the signed lease and any renewals or revisions. Written leases are required. All leases must restrict occupancy to no more than five (5) unrelated persons or to a single family of legally related Persons of any size. The Owner of a leased Lot or Dwelling Unit must furnish the Board with a tenant information form (provided by the Board) certifying that the tenant has agreed to be bound by this Declaration, the Articles, the Bylaws, and the Rules; and that the Owner accepts responsibility for the tenant's violation of such documents. The Association is a third-party beneficiary of any such lease solely for the purpose of enforcing this Declaration, and shall have the right to establish and charge fines against any Owner failing to enforce the provisions of this Declaration, Bylaws, and the Rules against such Owner's tenant. All tenants must execute a crime-free lease addendum on a form provided by the Board. The provisions of this **Section 4.23** shall not apply to the use of Lots or Dwelling Units owned by (or leased to) Declarant or any Builder as a model home or for marketing purposes.

#### **4.24 Environmental Protections.**

No Lot or Tract, nor any facilities on any Lot or Tract, shall be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances or solid waste, except in compliance with all applicable federal, state, and local laws or regulations. For purposes of this Section, "Hazardous Substances" shall be deemed to include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the New Mexico Environmental Quality Act and in the rule or regulations adopted and guidelines promulgated pursuant to said laws.

#### **4.25 Property Restrictions.**

No application for rezoning, variances, or use permits pertaining to any Lot or Tract shall be filed with any governmental authority by any Person unless the application has first been approved by the Board or the Declarant, so long as Declarant owns any portion of the Property, and the proposed use otherwise complies with this Declaration. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale or leasing of Lots, Common Areas, or any other portion of the Property.

#### **4.26 Model Homes**

The provision of this Declaration which prohibit nonresidential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by Builders engaged in the construction and/or sale of Dwelling Units within the Property and parking incidental to the visiting of such model homes, so long as the location of such model homes are approved in writing by the Architectural Committee, which approval shall not be unreasonably withheld, and the construction, operation, and maintenance of such model homes otherwise comply with all the provisions of this Declaration. It shall be deemed reasonable for the Architectural Committee to withhold its approval of the location of any such model homes to the extent that the location of such model home would materially and adversely interfere with the free-flow of pedestrian or vehicular traffic, relate an unreasonable amount of dust and debris, or would otherwise constitute a public or private nuisance to other Residents within the Property. The Architectural Committee shall also permit other areas to be used for parking in connection with the showing of model homes provided such parking areas are in compliance with the ordinances of any applicable governmental entity and any Rules adopted by the Board. Any Dwelling Units constructed as model homes shall cease to be used as model homes at any time the builder thereof is not actively engaged in the construction and/or sale of single-family and/or condominium residences within the Property, and no Dwelling Units shall be used primarily as a model home for the sale of Dwelling Units not located within the Property.



#### **4.27 Repair of Building.**

No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by **Article 5** below, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

#### **4.28 Signs.**

No signs whatsoever (including, but not limited to commercial and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

- (a) Signs required by legal proceedings or allowed under New Mexico law.
- (b) More than two (2) identification signs for individual residences, each with a face area of seventy-two square inches (72") or less.
- (c) "For Sale and For Lease" signs temporarily erected in connection with the sale and/or marketing of any Lot.
- (d) Signs and notices erected or posted in connection with the provision of building security.
- (e) Promotional and advertising signs of any Builder on any Lot approved from time to time in advance and in writing by the Architectural Committee as to number, size, color, design, message content, location, and type.
- (f) Such other signs (including, but not limited to, construction job identification signs, builder identification signs and subdivision identification signs) which are in conformance with the applicable requirements of the City of Rio Rancho or other applicable governmental agencies and which have been approved in advance and in writing by the Architectural Committee as to size, color, design, message content and location.

#### **4.29 Utility Service.**

No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Tract unless the same shall be contained in conduits or cables installed and maintained underground, except to the extent (if any) such underground or concealed placement may be prohibited by law, and except for such above-ground structures and/or media for transmission as may be originally constructed by the Declarant or any Builder or as may be otherwise approved in writing by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of building or structures.

#### **4.30 Right of Entry.**

During reasonable hours and upon reasonable prior written notice to the Owner or other Resident of a Lot or Tract, any member of the Architectural Committee or the Board, or any authorized representative thereof, shall have the right to enter upon and inspect any Lot or Tract, and the Improvements thereon, except for the interior portions of any completed Dwelling Units, for the purpose of ascertaining whether or not the provisions of this Declaration have been, or are being, complied with, and such Persons shall not be deemed guilty of trespass by reason of such entry.

#### **4.31 Declarant's Exemption**

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, Improvements or signs necessary or convenient to the development or sale of Lots and Tracts within the Property and, in connection therewith, Declarant shall have the right and authority to permit and authorize any Builder to construct and install temporary signage which is necessary or convenient to the development and sale of any Lots and Tracts within the Property.

#### **4.32 Crime and Drug Free Community.**

The Association shall have the right and power to enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity. The Association shall have the right and power to require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property.

#### **4.33 Exterior Lighting.**

Site lighting is defined as lighting mounted on the ground, in trees or on-site walls for the purpose of providing security, identification or decorative accent lighting. Building mounted lighting is defined as lighting built into or attached to buildings on walls, ceilings, eaves, soffits or fascias for the purpose of providing general illumination, area illumination or security illumination. For residential applications, site lighting must be directed onto vegetation or prominent site features and may not be used to light walls or building elements. Building mounted lighting must be directed downward away from adjacent Lots, streets and open spaces and may not be used to light walls or building elements for decorative purposes. All exterior lighting must provide for significant shielding to ensure that light sources and lamps are not Visible from Neighboring Property; no bare lamps will be permitted. Recessed lights in exterior soffits, eaves, or ceilings shall have the lamp recessed a minimum of three inches (3") into the ceiling. Proposed exterior lighting wattage must be reviewed and approved by the Architectural Committee. Low voltage lighting is recommended. Lights on motion detectors for the purpose of security illumination are generally permitted but are subject to specific approval of the Architectural Committee. If allowed by the Architectural Committee, these lights will only be allowed to operate on a motion detector and stay lit for a maximum of twenty (20) continuous minutes. Security lights must still meet the requirements of shielding of the light sources and the light sources should not be Visible from Neighboring Property. If problems with these lights occur, the Architectural Committee reserves the right to require that the fixtures be disconnected. These lights will not be allowed to operate for the purpose of general illumination.

#### **4.34 Swimming Pools and Spas.**

Swimming pools and spas, if any, should be designed as being visually connected to the Residence through walls or courtyards, and the visual impact must be minimized from adjacent Lots, streets and public spaces. The color of exposed tile on a negative edge pool must be dark or match the building color. No light or bright tile colors will be permitted on negative edge pools. Pool equipment must not be Visible from Neighboring Property and must be enclosed by walls and a gate or other suitable screening method.

#### **4.35 Exterior Recreational or Play Equipment.**

All exterior recreational or play equipment such as swing sets, slides, play structures, jungle gyms and similar equipment should endeavor, within reason, to meet the intent and requirements of this Declaration. This type of equipment or structures should be located in the least visible portions of the Lot. The height of this type of equipment should be limited to a maximum of eight feet (8') above finished grade.

#### **4.36 Exterior Holiday Decorations.**

The intent of this Section is not to discourage decorating for holidays, but only to maintain a standard of quality fitting the Property. Holiday decorations should be subtle, soft, and tasteful. Residential decoration displays should not have a commercial appearance. The Association reserves the right to prohibit any holiday decorations deemed inappropriate for the image of the Property. Luminaries are allowed but care must be taken that luminaries do not blow away or litter adjacent properties. Christmas decorations will be allowed between Thanksgiving and January 7th. No Christmas decorations are allowed before Thanksgiving and all must be removed by January 7th. Decorations for other holidays may be installed no more than two weeks prior to the holiday and must be removed within one week after the holiday.

#### **4.37 Size of Residences.**

Residences within the Property will contain at least 1,400 square feet of enclosed living area; provided that (i) at least seventy-five percent (75%) of the Residences within the Property will contain at least 1,500 square feet of enclosed living area.

#### **4.38 Roofs.**

Pitched roofs shall be tripped or tie into building masses and shall have a minimum slope of 2 1/2 to 12. Dominant roof colors such as white or reflective roof surfaces are prohibited. All pitched roofs shall be fully covered by ceramic tile, except that asphalt shingles may be used subject to prior approval by the Design Review Committee. Roof mounted mechanical equipment and antennae must be located so as to not to be visible from the front street. For "flat" roofs, the flashing detail between the roof and the parapet wall must be kept horizontal, not sloped to follow the roof or cricket slope. In the case of built-up roofs, all lap joints, seams or patches must be coated with an aggregate or ballast matching the roofing aggregate or ballast. Any joints, seams or tar patches shall be coated to match the adjacent roof surface and not be obvious. Parapets must return and end in an intersection with a building mass. Flat roofs should be surrounded by parapets a minimum of ten inches (10") above the adjacent roof surface, but in no case higher than thirty-six inches (36") above the adjacent roof surface. Sloped roof materials should be textural with very dark or deep color tones. Flat roof colors shall meet the requirements of this Declaration regarding color and it is strongly recommended that the color of flat roof material and associated flashing match the color of the building. In any case, the color of the inside of the parapets should be the same across the entire vertical surface (i.e., paint the flashing and vertical roof material to match the parapet wall).

#### **4.39 Materials – Exterior Surfaces.**

Exterior surfaces must generally be stucco, wood, brick, stone masonry or adobe block. A large amount of wood is strongly discouraged, although aluminum or other siding may be considered by the Design Review Committee. Exterior finish materials including stucco on all building walls, site walls, and screen walls must be continued down to below grade, thereby eliminating unfinished foundation walls. No highly reflective finishes, except glass, which may not be mirrored or opaque, and door hardware, shall be used on any exterior surfaces including exterior art work and sculpture.

#### **4.40 No Visible Storage Tanks.**

No fuel tanks or water tanks which are Visible from Neighboring Property are permitted.

### **ARTICLE 5 ARCHITECTURAL CONTROL**

#### **5.1 Approval Required.**

No improvements which would be Visible From Neighboring Property, or which would cause any Person or thing to be Visible From Neighboring Property, shall be constructed or installed on any Lot or Tract without the prior written approval of the Architectural Committee which shall have authority to regulate the external design and appearance of the Lots and Tracts and all Improvements constructed thereon. No addition, alteration, repair, change, or other work which in any way alters the exterior appearance of any part of a Lot or Tract, or any Improvements located thereon, which are or would be Visible From Neighboring Property shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change, or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee their written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change, or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans, and specifications which the Architectural Committee may reasonably request. If the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after an application meeting all of the requirements of this Declaration and of the Architectural Committee Rules, together with any fee required to be paid and any additional information, plans and specifications requested by the Architectural Committee have been submitted to the Architectural Committee, the application will be deemed to have been approved. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change, or other work

shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change, or other work subsequently submitted for approval.

## **5.2 Review of Plans.**

In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structures, location in relation to surrounding structures, and topography and finish-grade elevation. The Architectural Committee may disapprove plans and specifications for any construction, installation, addition, alteration, repair, change, or other work which must be approved in writing by the Architectural Committee pursuant to this **Article 5** if the Architectural Committee determines, in its sole and absolute discretion, that;

- (a) The proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration,
- (b) The proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Architectural Committee Rule;
- (c) The proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing Improvements within the Property or with Improvements previously approved by the Architectural Committee but not yet constructed;
- (d) The proposed construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable in the sole and absolute discretion of the Architectural Committee;
- (e) The proposed construction, installation, addition, alteration, repair, change, or other work would be detrimental to or adversely affect the appearance of the Property; or
- (f) The proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development for the Property.

The written approval required by the Architectural Committee pursuant to this **Article 5** shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule or regulation. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this **Article 5** shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change, or other work of that such construction, installation, addition, alteration, repair, change, or other work conforms to any applicable building codes or other federal, state, or local law, statute, ordinance, rule, or regulation.

## **5.3 Architectural Committee.**

An Architectural Committee shall be established to perform the duties and exercise the power and authority imposed on or granted to the Architectural Committee by the Community Documents. Until the last Lot in the property has been sold to an Owner and not a Builder, the Declarant shall have the sole right to determine the number of members on the Architectural Committee and to appoint and remove the members of the Architectural Committee. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, until the last Lot is sold to an Owner other than a Builder, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. After the last Lot is sold to an Owner other than a Builder, the Board shall determine the number of members on the Architectural Committee, and the members of the Architectural Committee shall be appointed and may be removed by the Board. Members of the Architectural Committee need not be Owners or Residents of the Property. In the event the Board does not appoint an Architectural Committee for any reason, the Board shall exercise the authority granted to the Architectural Committee under this Declaration.

The Architectural Committee may adopt, amend, and repeal architectural guidelines, standards and procedures (the "Rules") to be used in rendering its decision. Such guidelines, standards, rules and procedures may include, without limitation, provisions regarding: (a) the size and height of Residences or other Improvements; (b) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (c) placement of Dwelling Units and other buildings; (d) landscape design, content, and conformance

with the character of the Property and permitted and prohibited plants; (e) requirements concerning exterior color schemes, exterior finishes and materials; (f) signage; (g) perimeter and screen wall design and appearance; (h) time periods for commencement and completion of any approved Construction or Modification; and (i) rules and regulations governing construction activities. Any adoption, amendment, or repeal of the Design Guidelines after the Declarant no longer has the right to appoint the Architectural Committee must be approved by the Board.

The Architectural Committee may establish one or more subcommittees consisting of one or more members of the Architectural Committee and may delegate to such subcommittee or subcommittees the authority and power of the Architectural Committee to approve or disapprove any Construction or Modification within a specified portion of the Project.

The decisions of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration, but shall be subject to appeal to the Board as the final arbiter pursuant to the provisions of this Declaration below, and the decision on the Board in all cases shall be final and binding.

#### **5.4 Exclusions**

The provisions of the **Article 5** shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change, or replacement of any improvements made by or on behalf of Declarant, nor shall the Architectural Committee's approval be required for the construction of any Dwelling Units by any Builder which are constructed in accordance with plans and specifications therefore which have previously been approved by the Declarant in writing.

### **ARTICLE 6 ORGANIZATION OF ASSOCIATION**

#### **6.1 Formation of Association.**

The Association shall be a nonprofit New Mexico corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. The Association shall have all of the common law and statutory power conferred upon nonprofit corporations under New Mexico law and all power necessary and desirable to perform the Association's duties and obligations. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall not be dissolved unless another entity has agreed to assume the obligations of the Association under this Declaration with respect to the operation and maintenance of the Areas of Association Responsibility.

#### **6.2 Board of Directors and Officers: Management.**

The affairs of the Association shall be conducted by the Board elected in accordance with this Declaration and the Articles and Bylaws, and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of at least one (1) member. The initial director(s) and officers of the Association shall be designated in the Articles, and such persons shall serve until their death, resignation, or removal from office. Until the termination of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board except to the extent such right is limited by the provisions of the New Mexico Homeowner Association Act. The Board may also appoint various committees and may appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Notwithstanding anything contained in the foregoing or elsewhere in this Declaration to the contrary, the Declarant shall have the right to designate and to determine the compensation to be paid to the initial manager for the Association. Unless the Community Documents specifically require the vote or consent of the Members, the Board may do or cause to be done any act on behalf of the Association.

#### **6.3 Role of the Association.**

The Association is intended to be an "umbrella" organization whose primary responsibilities will be:

- (a) The maintenance of all Association Maintained Areas and/or Common Areas;
- (b) Appointment of individuals to serve on the Architectural Committee pursuant to the provision of this Declaration above; and
- (c) The enforcement of the Covenants contained in this Declaration.

#### **6.4 The Rules.**

By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Rules, which shall apply to, restrict, and govern the use of any Common Areas, Lots, and Tracts by any Member or Resident; provided however, that the Rules shall not be inconsistent with this Declaration, the Articles, or the Bylaws of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Rules, the provisions of this Declaration shall prevail.

The Rules may pertain to: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreations facilities situated upon the Areas of Association Responsibility or the Common Areas; (b) minimum standards for the Maintenance of Lots; or (c) restrictions on the use of Lots. Upon adoption, the Rules shall have the same force and effect as if they were set forth and were a part of this Declaration.

#### **6.5 Personal Liability.**

No member of the Board or of any committee of this Association, no officer of this Association, no Declarant, and no manager or other employee of this Association shall be personally liable to any Member, or to any other Person, including the Association, for any damages, costs, fees (including, without limitation, attorney fees), loss, or prejudice suffered or claimed on account of any act, omission error, or negligence of the Association, the Board, the manager, any representative or employee of the Association or any committee, committee member, or officer of the Association.

### **ARTICLE 7 MEMBERSHIP VOTING**

#### **7.1 Owners of Lots/Identity of Members.**

Each Owner of a Lot shall automatically be a Member of the Association, and shall remain a member of the Association until such time as his or her owner ceases for any reason, at which time his membership in the Association shall automatically cease. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable, and joint ownership or ownership of undivided interests in any real property which establishes a Membership shall not cause there to be more Memberships than the number established for purposes of Section. Each Member shall have one (1) Membership for each Lot owned by such Owner within the Property as shown on any Plat. Notwithstanding the fact that Owners of Tracts shall be subject to the Covenants contained in this Declaration which are specifically applicable to the Tracts, Owners of Tracts shall not be Members of the Association.

#### **7.2 Right to Vote.**

No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided with satisfactory proof thereof. The vote for each such Membership must be cast as a unit and fractional votes shall not be allowed. Cumulative voting is not permitted. If a Membership is owned by more than one Person or entity and such Owners are unable to agree amongst themselves as to how their vote or votes shall be cast, they shall lose the right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that such Member was acting with the authority and consent of all other owners of the same

Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

### **7.3 Membership Rights.**

Each Member shall have the rights, duties and obligations set for in this Declaration and such other rights, duties and obligations as are set for in the Articles and the Bylaws, as the same may be amended from time to time.

### **7.4 Transfer of Membership.**

The rights and obligations of the Owner of a Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except (a) upon transfer of ownership to an Owner's Lot and then only to transferee of ownership of the Lot, and (b) as provided above for the retention by Declarant of the voting rights of Builders who are not paying full Assessments. A transferor of a Lot must notify the Board of the transfer in writing, and remains liable for all obligations hereunder until the transferor so notifies the Board. A transfer of ownership to a Lot may be effectuated by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of trust of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico. Any attempt to make a prohibited transfer shall be void. Any transfer of the ownership of the Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

## **ARTICLE 8 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN**

### **8.1 Creation of Assessment Right and Personal Obligation of Assessments**

In order to provide funds to enable the Association to meet its obligations, there is hereby created a right of assessment exercisable on behalf of the Association by the Board. Assessments shall be imposed for the purpose of paying Common Expenses and to establish reserves as hereinafter provided, and shall be allocated equally among all Lots. The Assessments, together with interest, late charges and all costs (including but not limited to reasonable attorneys' fees and collection costs) incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. During the Declarant Control Period, no Regular Assessment or Special Assessment shall be levied against any Lot owned by the Declarant. Each Owner, by acceptance of his, her or its deed with respect to a Lot, is deemed to covenant and agree to pay the Assessments with respect to such Owner's Lot. Each Owner failing to pay an Assessment within fifteen (15) days of the date that the Assessment is due shall also pay a late charge as set by the Board from time to time. The initial late charge shall be greater of Ten Dollars (\$10.00) per month or ten percent (10%) of the unpaid Assessment. Late charges shall be subject to any limitations imposed by the applicable New Mexico law or other applicable law, as amended from time to time. The Owner shall also pay all costs and attorneys' fees incurred by the Association in seeking to collect such Assessments and other amounts. No Owner shall be relieved of the obligation to pay any of the Assessments by abandoning or not using his, her, or its Lot or the Common Areas, or by leasing or otherwise transferring occupancy rights with respect to his, her, or its Lot. However, upon transfer by an Owner of fee title to such Owner's Lot and with written notice to the Board, such transferring Owner shall not be liable for any Assessments thereafter levied against such Lot. 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 by reason of the alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, the Articles or the Bylaws.

### **8.2 Purpose of Assessments; Common Expenses.**

The Association shall have the right to impose Assessments for the purpose of paying all Common Expenses of the Association, which shall include without limitation, all costs incurred in connection with the acquisition, construction, alteration, maintenance, provision, and operation of all land, properties, improvements, facilities, services, projects, programs, studies, and systems desirable or beneficial to the general common interests of the

Property, its Members, and Residents, such as the maintenance of landscaping Common Areas and Areas of Association Responsibility, public and private rights-of-way and drainage areas, obtaining liability and casualty loss insurance, supplying utilities and other public services, providing for communication and transportation within and dissemination of information concerning the Property, obtaining legal and accounting services for the Association, indemnifying officers and directors of the Association, contracting for solid waste disposal services, fire protection and emergency services, streetlights and other services for the protection of the health and safety of the Members and Residents of the Association.

### **8.3 Lien for Assessments; Foreclosure**

#### **8.3.1 Lien for Assessments.**

There is hereby created and established a lien in favor of the Association against each Lot which shall secure payment of all present and future Assessments assessed or levied against such Lot or the Owner thereof (together with any other amounts levied against such Lot or the Owner thereof pursuant to this Declaration or the Articles, the Bylaws or the Rules). Such lien shall be prior and superior to all other liens affecting the Lot in question, except: (a) taxes, bonds, assessments and other levies, which by law, are superior thereto and (b) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provided by law for the foreclosure of mortgages. The sale or transfer of any Lot shall not affect the Assessment Lien; provided however, that the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. The Association shall have the power to bid for any Lot at any sale to foreclose the Association's lien on the Lot, and to acquire and hold, lease, mortgage, and convey the same. During the period the Lot is owned by the Association, no right to vote shall be exercised with respect to that Lot and no Assessment shall be assessed or levied on or with respect to that Lot; provided, however, that the Association's acquisition and ownership of a Lot under such circumstances shall not be deemed to convert the same into Common Areas. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further Recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof, or otherwise (although the Board shall have the option to Record written notices of claims of lien in such circumstances as the Board may deem appropriate).

#### **8.3.2 Effect of Nonpayment of Assessments; Remedies of the Association.**

Any Assessment, or any installment of any Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges, and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all attorneys fees, court costs, and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (d) any amounts payable to the Association; and (e) any other amounts payable to the Association pursuant to the Community Documents.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including but not limited to the following:

- (a) **Suspension of Rights.** The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights (except that any voting rights which are deemed assigned to Declarant as provided in this Declaration above shall not be subject to suspension by the Board regardless of whether any delinquent Amount remains unpaid with respect to the Lot or Lots subject to such voting rights) and rights to use and enjoy the Common Areas, in accordance with the procedures that conform to New Mexico Law.
- (b) **Collection of Delinquent Amount.** The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount.



- (c) **Recording of Notice.** The Board may Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description of street address of the Lot against which the Notice of Lien is recording and the Delinquent Amount plus interest, accrued collection costs, lien recording fees, and reasonable attorneys' fees as provided in this Declaration. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of Recording the notice, processing the delinquency, and Recording a notice of satisfaction of the lien. Before Recording Notice of Lien against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments, together with interest, late charges, and reasonable attorneys' fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single of the demand, the Association may proceed with recording a Notice of Lien against the Lot. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees fines, reasonable attorney's fees, court costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.
- (d) **Foreclosure of Lien.** The Board may foreclose the lien against the Lot in accordance with then prevailing New Mexico law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and the redemption period shall be one (1) month in lieu of any statutory redemption period.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the Recording of this Declaration; (b) liens for real estate taxes and other governmental assessments and charges against the Lot; and (c) any Recorded First Mortgage or Real Estate Contract on the Lot Recorded prior to the Association's lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage purchase at foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

#### **8.3.3 Liens for Assessments.**

The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. It shall be the duty of every Owner to pay all Assessments with respect to the Owner's Lot in the manner provided herein. Such Assessments, together with interest and costs of collection as provided for herein and in this Declaration, shall, until paid, be a charge and continuing servitude and lien upon the Lot against which such Assessments are made; provided, however, that the lien for such Assessments shall be subordinate to only those matters identified in this Declaration. The Association and the Board shall have the authority to exercise and enforce any and all rights and remedies provided for in this Declaration or the Bylaws, or otherwise available at law or in equity for the collection of all unpaid Assessments, interest thereon, costs of collection thereof, and reasonable collection agency fees and attorneys' fees.

#### **8.3.4 Judgments.**

The Association shall be entitled to maintain suit to recover a money judgment for unpaid Assessments without a foreclosure of the lien for such Assessments, and the same shall not constitute a waiver of the lien for such Assessments.

#### **8.4 Declarant's Exemption.**

So long as the Declarant or any Builder owns one or more Lots, any Lots owned by the Declarant shall not be subject to any Assessment, Declarant may pay to the Association Deficiency Assessments as provided in **Section 8.6**. Any Association Deficiency Assessments paid by the Declarant shall be considered to be a loan to the Association at an interest rate of Wall Street Journal Prime plus one percent (1%). The Association shall repay said loan at such time as it negotiates with the Declarant.

#### **8.5 Reduced Assessments.**

Each Builder shall pay Annual Assessments with respect to Lots owned by such Builder in an amount equal to ten percent (10%) of the Annual Assessment payable by other Owners or other than Declarant ("Reduced Assessments").

#### **8.6 Deficiency Assessments.**

During any period when the Declarant is exempt from the payment of Annual Assessments and any Builder is paying Reduced Assessments, the Declarant and each Builder, as applicable, may pay or contribute to the Association cash as may be necessary to make up any budget shortfalls of the Association resulting from the Reduced Assessments paid by the Builder and the fact that Declarant is exempt from the payment of Assessments with respect to any Lots owned by Declarant.

#### **8.7 Computation of Regular Assessments; Annual Budget.**

The Regular Assessments shall commence as to all Lots on the first day of the calendar month following conveyance of the first Lot to an Owner other than a Builder. The initial Regular Assessment shall be prorated according to the number of months remaining in the calendar year within which the Regular Assessments actually commence. At least thirty (30) days in prior to the commencement of the Assessment period, the Board shall prepare and adopt a budget of the estimated Common Expenses for the next Assessment Period, including any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such Common Expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments, or other amount to be generated through Assessments against the Lots. The Regular Assessments shall include contributions to the Capital Reserve Fund described in **Section 8.13** below. Based on the budget adopted by the Board, the Board shall assess against each Assessable Lot a Regular Assessment. The Regular Assessment shall be the same for each Assessable Lot. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by New Mexico law. When adopted by the Board, the Board shall make the annual budget available to the Members of the Association. The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board and shall not relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a budget for any Assessment Period at least thirty (30) days in advance, then the current Regular Assessment amount shall apply until the Board establishes the Regular Assessment for each subsequent fiscal year. Except as provided in **Section 8.9** neither the budget nor any Annual Assessment levied pursuant thereto shall be required to be approved by the Owners.

If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including without limitation, nonpayment of Assessment by Members, the Board may amend the budget and increase the Regular Assessment for that Assessment Period (subject to such limitations as may be imposed by New Mexico law) and the revised Regular Assessment shall commence on the date designated by the Board.

#### **8.8 Due Dates: Confirmation of Payment.**

Assessments for each fiscal year shall be due and payable as determined by the Board. Assessments shall be deemed "paid" when actually received by the Association or by its designated manager or agent (but if any Assessments are paid by check and the bank or other institution upon which such check is drawn thereafter dishonors and refuses to pay such check, those Assessments shall not be deemed "paid" and shall remain due and payable with interest accruing from the date such Assessments were originally due). The Association shall, upon written request, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments payable with respect to a specific Lot have been paid. A properly executed certificate of the Association as to the status of the payment of Assessments with respect to any such Lot shall be binding upon the Association as to the matters described therein. Any Assessments which are not paid when due shall be subject to the payment of interest and late fees in accordance with the provisions of **Section 8.3.2** above.

### **8.9 Maximum Annual Assessment.**

The Assessments provided for under **Section 8.7** shall not at any time exceed the "Maximum Annual Assessment," as determined in accordance with this **Section 8.9**. For the fiscal year ending December 31 of the year in which the Common Areas are conveyed to the Association, the Maximum Annual Assessment applicable to the Lots shall be \$360.00 per year, or \$30.00 per month. Thereafter, except as provided below, unless a greater increase is approved by a vote of at least fifty-one percent (51%) of the votes of each class of Members represented in Person at a meeting of Members called for such purpose at which a quorum is present, the Maximum Annual Assessment for any fiscal year shall be equal to the Maximum Annual Assessment for the immediately preceding fiscal year increased at a rate equal to or less than twenty percent (20%) of the previous Annual Assessment. Further, notwithstanding the foregoing, the Board may, without the approval of the Members, increase the Maximum Annual Assessment for any fiscal year by an amount sufficient to permit the Board to meet any increases over the preceding fiscal year in: (i) premiums for any insurance coverage required by this Declaration to be maintained by the Association, (ii) charges for maintenance of Common Area landscaping, and (iii) charges for utility services necessary to the Association's performance of its obligations under this Declaration, notwithstanding the fact that the resulting increase in the Maximum Annual Assessment is greater than otherwise permitted under the third sentence of this **Section 8.9**.

### **8.10 Special Assessments.**

The Association may, in addition to the Annual Assessments under **Section 8.7**, levy a Special Assessment but only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a Capital Improvement owned by the Association or for defraying other extraordinary expenses, provided, however, that such Special Assessment must be approved by at least two-thirds (2/3rds) of the votes entitled to be cast by the Members voting in Person at a meeting of the Association duly called for such purpose. Special Assessments shall be assessed uniformly among the Owners.

### **8.11 Transfer Fee.**

Each Person who acquires a Lot together with a completed Dwelling Unit constructed thereon shall pay to the Association (or, at the direction of the Association, to any management company employed by the Association to manage the affairs of the Association) immediately upon becoming the Owner of the Lot a transfer fee of at least \$50.00 or in such greater amount as is established from time to time by the Board.

### **8.12 Working Capital Fund.**

To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Person who acquires a Lot together with a completed Dwelling Unit constructed thereon shall pay to the Association immediately upon becoming the Owner of such Lot a sum equal to one-sixth (1/6<sup>th</sup>) of the current Annual Assessment for such Lot. Funds paid to the Association pursuant to this **Section 8.12** may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this **Section 8.12** shall be nonrefundable and shall not be offset or credited against or considered as advance payment of the Annual Assessment or any other Assessments levied by the Association pursuant to this Declaration. Payments made pursuant to this **Section 8.12** shall not be used in calculating the Maximum Annual Assessment pursuant to this Declaration hereof. Payment of Working Capital Contribution pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees payable pursuant to the Community Documents and any other fees payable at the close of escrow.

No Working Capital Contribution shall be payable with respect to: (a) the transfer or conveyance of a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution in which event a Working Capital Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Lot as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded Real Estate Contract.

### **8.13 Capital Reserve Fund/Reserves.**

The Board shall establish reserves for the future periodic maintenance, repair, or replacement of the major components of the Areas of Association Responsibility or Common Areas. The reserves may be funded from regular Assessments, the Working Capital contributions paid pursuant to this Declaration, the Reserve Contributions paid pursuant to this Declaration or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board in a separate bank account (the "Reserve Account") to be held for the purpose for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Unless the Association is exempt from federal or State taxes, all reserves shall be account for as contributions to the capital of the Association and segregated from the regular income of the Association or in any other manner authorized by law or regulation of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association. Funds in the Reserve Account may only be used to pay costs and expenses related to the periodic maintenance, repair, and replacement of the Areas of Association Responsibility, unless the expenditure of any or all of the funds in the Reserve Account for other purposes is approved by the vote of Owners holding at least two-thirds (2/3rds) of the votes in the Association. Notwithstanding any other provision of this Section to the contrary, any funds held in the Reserve Account which are in excess of the funds reasonably necessary for the future repair and replacement of the major components of the Areas of Association Responsibility or Common Areas, as determined by the Board in its sole discretion, may be used for the construction of new improvements on the Common Area.

### **8.14 Capital Reserve Fee/Reserve Contribution.**

Except as otherwise provided in the Section, each Purchaser (other than the Declarant or a Builder) shall pay to the Association, immediately upon becoming the Owner of the Lot, a contribution to the reserves of the Association for the periodic maintenance, repair, and replacement of the major components of the Areas of Association Responsibility or Common Areas (the "Reserve Contribution"). The amount of the initial Reserve Contribution shall be set by the Board prior to the conveyance of the first Lot to a Purchaser. The Board may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but the amount of the Reserve Contribution may not be increased by the Board by more than twenty percent (20%) during any year without the approval of Members holding more than fifty percent (50%) of the votes in the Association.

No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a/or a Lot by devise or intestate succession; (b) a transfer or conveyance of a Lot to a family trust, family limited partnership, or other Person for bonafide estate planning purposes; (c) a transfer or conveyance of a Lot to a corporation, partnership, or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Lot by a trustee's deed following a trustee's sale under a deed of trust, or (3) the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded Real Estate Contract.

All Reserve Contributions shall be deposited in the Reserve Account established pursuant to this Declaration. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of Assessments. Reserve Contributions payable pursuant to this Section are secured by the Assessment Lien and are in addition to any other fees provided for in the Community Documents and any other fees to be paid at the close of escrow.

## **ARTICLE 9**

### **USE OF FUNDS; BORROWING POWER**

#### **9.1 Purposes for which Association's Funds May Be Used.**

The Association shall apply all funds and property collected and received by it (including the Annual Assessments, Reduced Assessments, Special Assessments, Deficiency Assessments, Capital Reserve Fees, fees, loan proceeds, surplus funds, and all funds and property received by it from any other source) for the

common good and benefit of the Property and the Members and Residents by devoting said funds and property, among other things, to the payment of all Common Expenses.

### **9.2 Borrowing Power.**

The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate; provided, however, that no portion of the Common Areas shall be mortgaged or otherwise encumbered without the approval of at least two-thirds (2/3rds) of the Members (and the Declarant during the Declarant Control Period). Notwithstanding anything contained in the foregoing to the contrary, if ingress, and egress to any Owner's Lot is over or through any Common Areas which will be mortgaged or otherwise encumbered as provided in the foregoing, any such mortgage or encumbrance shall be subject to such Lot Owner's right and easement for ingress and egress.

### **9.3 Surplus Funds Association's Right in Spending Funds from Year to Year.**

The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, Deficiency Assessments, Special Assessments, Capital Reserve Fees, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## **ARTICLE 10** **INSURANCE**

### **10.1 Scope of Coverage**

Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain insurance against liability incurred as a result of death or injury to Persons or damage to property on the Association Maintained Areas, including the Common Areas, directors and officers liability insurance, and/or such other insurance as the Board determines appropriate with the amount and type of coverage to be determined by the Board. The premiums payable by the Association for such insurance shall be part of the Common Expenses. Such insurance may include, without limitation, any of the following:

- (a) Comprehensive general liability insurance, including medical payments insurance, in amounts determined by the Board, but not less than \$1,000,000, which shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the Areas of Association Responsibility including the Common Areas, and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.
- (b) Property/Casualty loss insurance on all Common Areas, including the Common Areas, insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility including the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from a property policy.
- (c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of the State of New Mexico.
- (d) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association and its Members.

The insurance policies obtained by the Association shall to the extent reasonably available, contain the following provisions:

- (i) There shall be no subrogation with respect to the Association, its agents, servants or employees with respect to Owner and members of their household;
- (ii) No act or omission of any Member, unless acting within the scope of the authority on behalf of the Association, will void the policy or be a condition of recovery on the policy;
- (iii) The coverage afforded by any such policy shall not be brought into contribution or proration with any insurance which may be purchased by any Member or their mortgagees or beneficiaries under deeds of trust;
- (iv) A severability-of-interest endorsement which shall preclude the insurer from denying the claim of any Member because of the negligent acts of the Association or other Members; and
- (v) A statement of the name of the insured as the Association.
- (vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reductions, or cancellation of the policy.

## **10.2 Certificates of Insurance**

An insurer that has issued an insurance policy under this Article shall issue a certificated or a memorandum of insurance to the Association and, upon request, to any mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each mortgagee or beneficiary under a deed of trust to who certificates of insurance have been issued.

## **10.3 Payment of Insurance Proceeds.**

With respect to any loss to any Areas of Association Responsibility or Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility or Common Area. The Association irrevocably appointed and authorized by the Owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board shall have full and complete power to act for the Association in this regard and may, in its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the Trustee shall have authority to negotiate losses under any policy purchased by the Association.

## **10.4 Repair and Replacement of Damaged or Destroyed Property.**

Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or the Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to repair or replace the damaged or destroyed Improvements. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association.

If all the Areas of Association Responsibility or Common Areas are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility or Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be retained by the Association as an additional capital reserve.

## **10.5 Individual responsibility; Disclaimer or Liability.**

It shall be the responsibility of each Owner and Resident to provide insurance for himself on his real or personal property interests on or within the Property, including, but not limited to, additions and Improvements thereto, furnishings and personal property thereon, and for his personal liability. No Person shall maintain any insurance

which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Areas of Association Responsibility. The Association, any Board member, and Declarant shall not be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or the amount of such insurance is not adequate.

## **ARTICLE 11**

### **DISPUTE RESOLUTION**

It is intended that all disputes and claims will be resolved amicably, without the necessity of protracted and costly litigation. Accordingly, the Declarant, all Builders, the Association, the Board, and all Owners shall be bound by the following claim resolution procedure.

#### **11.1 Alternative Dispute Resolution.**

Any dispute or claim between or among (a) Declarant (or its respective agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand; or (b) any Owner and another Owner arising out of this Declaration; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this declaration; or (ii) the design or construction of any Improvements; but excluding disputes relating to the payment of any type of Assessment or enforcement of this Declaration against an Owner (collectively a "Dispute"), shall be subject first to negotiation and then binding arbitration as set forth in this Section 11.1.

##### **11.1.1 Negotiation.**

Each party to a Dispute shall make every reasonable effort to meet in Person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear his/her/its own attorneys' fees and costs in connection with such negotiation.

##### **11.1.2 Final and Binding Arbitration.**

If the parties cannot resolve their Dispute pursuant to negotiation, the Disputing Party shall the right to submit the Dispute to arbitration in accordance with the arbitration rules of AAA, as modified or as otherwise provided in this **Section 11.1.2.** The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceedings. Neither the Declarant nor any Builder shall be required to participate in the arbitration proceeding if all parties against whom the Declarant or such Builder would have necessary or permissive cross-claims or counterclaims are or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this **Section 11.1.2**, the arbitrator shall have the authority to try all issues, whether of fact or law.

##### **11.1.2.1 Place.**

Unless otherwise mutually agreed by the parties to the proceedings, the arbitration proceedings shall be heard in Sandoval County, State of New Mexico.

##### **11.1.2.2 Arbitration.**

A single arbitrator shall be selected in accordance with the rules of AAA from panels maintained by the AAA with experience in relevant matter, which are the subject of the Dispute. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

#### **11.2 Enforcement of Resolution.**

If the parties to a Dispute resolve such Dispute through negotiation in accordance with **Section 11.1.1** above, and any party thereafter fails to abide by the terms of such negotiation or if the parties accept an award of arbitration in accordance with **Section 11.1.2** and any party to the Dispute thereafter fails to comply with such award, then the other party to the Dispute may file suit or initiate proceedings to enforce the terms of such negotiation or the award without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the terms of the negotiation or the award shall be entitled to recover from the noncomplying party (or if more than one noncomplying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation or the award including, without limitation, attorneys fees and court costs.

### **11.3 Conflicts**

Notwithstanding anything to the contrary in this Declaration, if there is a conflict between the provisions of this Article and any other provision of the Community Documents, this Article shall control.

## **ARTICLE 12** **MAINTENANCE**

### **12.1 Common Areas, Areas of Association Responsibility, and Public Rights of Way.**

The Association shall be responsible for the management and Maintenance of the Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association responsibility which any governmental entity is maintaining or is obligated to maintain. The Association shall use a reasonably high standard of care in proficing for the repair, management, and maintenance of the Areas of Association Responsibility so that the project will reflect a high degree of pride in ownership. The Board, however, shall be the sole judge as to the appropriate level of maintenance of all Areas of Association Responsibility by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Areas of Association Responsibility shall be taken by the Board of by its duly delegated representative. Notwithstanding any duty the Association may have to maintain and repair the Common Areas, the Association and Declarant shall not be liable for injury damage caused by the latent condition or by any Member, Owner, Resident, or other Person. Neither the Association nor the Declarant shall be liable to any Person for any claim, injury, or damage arising from the use of the Areas of Association Responsibility, which shall be used at the risk of the user. Declarant has no duty or obligation to maintain, operate, manage, or repair the Common Areas or Areas of Association.

The Association may also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of the Property within areas shown on a Plat for any Tract within the Property and which are intended for the general benefit of the Owners and Residents of the Property, except the Association shall not maintain areas which (a) City of Rio Rancho County or other governmental entity is maintaining, or (b) are required to be maintained by the Owners of a Lot. The Association shall, in the discretion of the Board:

- (i) Reconstruct, repair, replace, or refinish any Improvement or portion thereof upon Common Areas;
- (ii) Replace injured and diseased trees and other vegetation in any Common Area and plant trees, shrubs and ground cover to the Common Area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (iii) Place and maintain upon any Common Area such as signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (iv) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in the Declaration.

No Owner, Resident, or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify, or remove any Improvements situated on the Areas of Association responsibility without the written approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management or Maintenance of the Areas of Association Responsibility, and the improvements located thereon.



In the event any Plat, deed restriction, or this Declaration permits the Board to determine whether Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, Lessees, and Residents of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location, and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this **Article 12** and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

#### **12.2 Streetlights.**

At the option of the Association, or its duly delegated representative, it may own, operate, maintain, and replace any and all streetlights within the Property that are installed as part of the Improvements, and the costs thereof shall be included in the Assessment.

#### **12.3 Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.**

In the event that the need for maintenance or repair of Common Areas and other Areas of Association Responsibility is caused through the act of any Member, his family, guests, tenants, or invitees, the cost of such maintenance or repairs shall be due within thirty (30) days of notice and shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject, and shall be secured by the Assessment Lien, provided that prior to submitting a bill for such costs, the Board shall cause a notice to be sent to Owner specifying the maintenance or repairs and Owner shall have the right to object to his responsibility. Following the Board's consideration of such objection, the Board may absolve the Owner or demand that the Owner pay the bill within the thirty (30) day period provided above. The decision of the Board shall be final and binding. Any charges or fees to be paid by the Owner of the Lot in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

#### **12.4 Improper Maintenance and Use of Lots and Tracts.**

In the event of any portion of any Lot or Tract is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots, Tracts, or other areas of the Property which are substantially affected thereby or related thereto, or in the event any portion of a Lot or Tract is being used in a manner which violates this Declaration, or in the event the Owner of any Lot or Tract is failing to perform any of its obligations under this Declaration or the Rules, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If, at the expiration of said fourteen (14) day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken (either by undertaking such corrective action) and the cost thereof, together with any attorneys' fees expended by the Association in connection therewith, shall be added to and become a part of the Assessment to which the offending Owner's Lot or Tract is subject, if any, and shall be secured by the Assessment Lien.

#### **12.5 Conveyance of Common Areas.**

On or before the conveyance of the first Lot to an Owner other than a builder, the Declarant or the Owner thereof, if other than the Declarant, shall execute and deliver to the Association a quitclaim or warranty deed of conveyance for all Common Areas. Upon Recordation of such Deed, the Association shall be deemed to have assumed all responsibility for the ongoing maintenance, repair, and restoration of such Common Areas in accordance with the Community Documents. After conveyance of any Common Areas to the Association, the Association shall not further convey the Common Area without the consent of at least two-thirds (2/3) of the Members.

## **12.6 Landscaping Replacement.**

Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for the Common Areas and the Areas of Association Responsibility due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead and damaged landscaping. If in the reasonable discretion of the Board: (a) the remaining landscaping is acceptable to the Board and (b) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on the approved landscaping plans filed with the City in connection with the Property even if the location of specific plants is different than the locations shown on such approved landscaping plans. Neither Declarant, any builder, nor any other installer of landscaping the Common Areas or the Areas of Association Responsibility shall be responsible for replacement of landscaping that dies more than ninety (90) days following installation or than requires replacement due to vandalism, lack of property watering or proper maintenance by the Association, or damage due to negligence; the Association shall be solely responsible for such replacement (subject to potential recovery by the Association from any vandal or negligent person).

## **12.7 Alteration of Maintenance Procedures.**

Following the termination of the Declarant Control Period and so long as the Declarant or any Builder owns any lot, the Association shall not, without the prior written approval of Declarant and all Builders, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Declarant Control Period unless such alteration will provide for a higher level of maintenance and repair. Declarant or any Builder shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant or a Builder that such maintenance or repair is required under this Section. If Declarant or a Builder performs such maintenance or repair, the costs incurred by the Declarant or Builder shall be reimbursed by the Association within thirty (30) days following written demand for reimbursement sent to the Association and accompanied by copies of invoices for such costs. This section shall not be subject to amendment without the written approval of Declarant and all Builders.

## **12.8 Delegation of Responsibility.**

The Board shall have the sole discretion to determine whether the Association or an individual Owner should be responsible for maintenance of certain Common Areas or rights-of-way considering cost, uniformity of appearance, location, and other relevant factors.

# **ARTICLE 13 RIGHTS AND POWERS OF ASSOCIATION**

## **13.1 Association's Rights and Powers as Set Forth in Articles and Bylaws.**

In addition to the rights and powers of the Association set forth in this Declaration, Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a Person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

## **13.2 Rights of Enforcement of Provisions of This and Other Instruments.**

The Declarant, for so long as it owns any real property within the Property, and the Association as the agent and representative of the Members, shall each have their right to enforce the provisions of this Declaration. However, if the Declarant or the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, by any appropriate action, whether in law or in equity, but not at the expense of the Association,

provided that, if the Board, in its business judgment, deems it inappropriate under the circumstances, such enforcement shall not be required, and no Member may bring an action against the Board or Declarant for failure to enforce the Community Documents without joining as claimants at least twenty percent (20%) of the Members, and without complying with the provisions contained in this Declaration. Any Member may enforce the provisions of this Declaration at any time by any appropriate action and whether or not Declarant and/or the Association takes any action to enforce the provisions of this Declaration.

The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to:

- (a) Imposing reasonable monetary fines after notice and opportunity to be heard is given to the Owner or another violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident or the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;
- (b) suspending an Owner's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;
- (d) suspending any services provided by the Association to any Owner or the Owner's Lot if the Owner is more than fifteen (15) days delinquent in paying any assessment or other charge owned to the Association.
- (e) exercising self-help or taking action to abate any violation of the Community Documents in a non-emergency situation;
- (f) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any Person, prohibiting any contractor, subcontractor, agent employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration, the Design Guidelines or the Rules from continuing or performing any further activities in the Project;
- (h) towing vehicles which are parked in violation of this Declaration or the Rules; and
- (i) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents to recover fines or money damages or to obtain such other relief as to which the Association may be entitled.
- (j) Recording a written notice of violation to any Owner, Lessee, or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the same following information; the name of the Owner, Lessee, or Resident violating or responsible for the violation of the Community Documents; the legal description of the Lot against which the notice is being Recorded; a brief description of the nature of the violation; a statement that the notice is being Recorded by the Association pursuant to this Declaration; and a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute any evidence that no violation exists with response to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

The Association shall not be obligated to take any enforcement action if the Board determines, in its sole discretion, that because of the strength of the Association's possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board enforcement action would not be appropriate or in the best interest of the Association.

### **13.3 Contracts with Others for Performance of Association's Duties.**

Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one (1) or more directors or officers of the Association, or members of any committee, is employed by, or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer, or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above, or grant or deny any approval sought by the Declarant or its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract transaction, or approval with like force and effect as if he were not so interested.

### **13.4 Fines.**

The Association, acting through the Board, shall have the right to adopt a schedule of fines for the violation of any provision of the Community Documents, including the Rules, by any Owner or Resident. No fine shall be imposed, however, without first providing a written warning to the Owner or Resident in question describing the violation and stating that the failure to stop such violation within no less than ten (10) days, or in the event of a recurrence of the same violation within six (6) months of the original violation, shall make the Owner or Resident, as applicable, subject to the imposition of a fine. All Owners shall be given an opportunity to be heard regarding the imposition of a fine prior to the levying of a fine. All fines imposed by the Association shall be paid within thirty (30) days following imposition, and shall accrue interest at a per-annum rate equal to twelve percent (12%) thereafter, and shall be secured by the Assessment Lien.

### **13.5 Board of Directors Power to Enforce**

#### **13.5.1 Power to Enforce.**

The Board shall have the authority to enforce all uses and restrictions contained in this Declaration and all decisions of the Architectural Committee. The Board shall act as the final arbiter of any dispute related to the uses and restrictions contained in this Declaration and all rules enacted under this Declaration. The Board shall act as the final interpreter of any of the provisions in this Declaration and all rules or decisions of the Architectural Committee under this Declaration. Nothing contained in this **Section 13.5** shall limit the Association's right to file legal actions for the collection of Assessments, or to enjoin violations.

- (a) Any Owner shall submit a written request to the Board for arbitration related to any dispute (except collection of Assessments).
- (b) Within thirty (30) days of the Board's receipt of an Owner's written request for an arbitration hearing, the Board shall set the matter for an arbitration hearing. The Board shall notify the Owner of the hearing date and time in writing.
- (c) The Board shall issue its award within thirty (30) days after the date of the hearing.

#### **13.5.2 Board Discretion to Regulate the Appeal Process.**

The Board shall regulate hearing procedures in its discretion on a case-by-case basis. In no event shall the Board prohibit the Owner from testifying at the hearing. The Board shall admit such witness testimony and physical evidence as the Board deems relevant and noncumulative. The Owner shall have the right to cross-examine witnesses and to be represented by counsel. The Board shall have the right to issue subpoenas for witnesses, books, records, and documents to the fullest extent permitted under New Mexico law. This **Section 13.5** shall be governed by and construed in accordance with the laws of the State of New Mexico. The parties incorporate by this reference all the remaining portions of New Mexico's arbitration statutes.

### **13.5.3 Binding Decision of the Board.**

Any award pursuant to this *Section 13.5* is final and binding upon the Owner and may not be subject to judicial challenge.

### **13.5.4 Owner Acceptance of Board's Arbitration.**

By accepting a deed subject to this Declaration, all Owners agree to the arbitration agreements contained in this Declaration.

## **ARTICLE 14** **ANNEXATION AND DEANNEXATION**

### **14.1 Annexation of Other Real Property.**

Real property other than the Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association only with the prior written consent of at least seventy-five percent (75%) of the Members of the Association. In the event that any additional real property is annexed to the Property, such annexation shall be effected by the Recording of a Supplementary Declaration covering the real property sought to be annexed and executed and Recorded by the Board and by the fee title holders of the real property sought to be annexed.

### **14.2 Effect of Annexation.**

Such execution and Recording of a Supplementary Declaration shall constitute and effectuate the annexation of said other real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter the other real property so annexed shall be part of the Property and all of the Owners of Lots in the other real property so annexed shall automatically be Members of the Association.

### **14.3 Deannexation Without Approval.**

A portion or portions of the Property may be deannexed from the Property and be withdrawn from this Declaration and the jurisdiction of the Association, provided that a Certificate of Deannexation covering the portion of the Property sought to be deannexed shall be executed and Recorded by Declarant (so long as Declarant owns or controls any Lots), by at least seventy-five percent (75%) of the Members of the Association, and by the Owner(s) of all of the real property to be deannexed.

### **14.4 Supplementary Declarations and Certificates of Deannexation.**

The annexations and deannexations authorized under the foregoing Sections shall be made by Recording in the office of the County Recorder of Sandoval County, New Mexico, a Supplementary Declaration of Covenants, Conditions, and Restrictions, or similar instrument, which shall extend the plan of this Declaration to such property or a Certificate of Deannexation which shall remove the portion of the Property covered thereby from the plan of this Declaration. The Supplementary Declarations contemplated above may contain such complementary additions and modifications of the Covenants, Conditions, and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify, or add to the Covenants established by this Declaration within the existing Property.

## **ARTICLE 15** **TERM; AMENDMENTS; TERMINATION**

### **15.1 Term; Method of Termination.**

This Declaration shall be effective upon the date of its Recording and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date that this Declaration is Recorded.

From and after said date, this Declaration as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then members casting fifty-one percent (51%) of the total votes cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effect period hereof or any ten (10) year extension, and by the Declarant to the extent Declarant still owns any Lots. This Declaration may be terminated at any time if ninety percent (90%) of the votes cast by the Members shall be cast in favor of termination at a meeting held for such purpose and the Declarant, to the extent it continues to own a Lot in the Property, have voted in favor of termination. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote until six (6) months after such vote, from the holders of First Mortgages to which the Assessment Lien is subordinate pursuant to this declaration above, on seventy-five percent (75%) of the Lots upon which there are such First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County recorder of Sandoval County, New Mexico, a Certificate of Termination duly signed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set for in its Articles.

## **15.2 Amendments.**

This Declaration may be amended at any time by the affirmative vote of Owners of not less than seventy-five percent (75%) of the Lots. So long as the Declarant owns one or more Lots, any amendment to this Declaration must be approved in writing by the Declarant. So long as the Declarant owns any real property subject to this Declaration, the Declarant may unilaterally amend this Declaration without the consent or approval of any Owners.

Any amendment approved by the Owners shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

Any challenge to any amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

## **15.3 Right of Amendment if requested by Governmental Agency or Lending Institutions.**

The Declarant, so long as the Declarant owns any Lot or any part of the Property, and thereafter, the Board, may amend this Declaration, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Department of Veterans Affairs or any federal, state, or local governmental agency whose approval of the Project or the Community Documents is required by law by the Declarant or the Board.

So long as the Declarant or any Builder owns any Lot or any part of the Property, any amendment to this Declaration must be approved in writing by the Declarant. The Declarant, so long as the Declarant owns any Lot or any part of the Property, and thereafter the Board, may amend the Declaration without the consent of any other Owner for the purposes of correcting technical or clerical errors.

Any amendment approved by the Owners of not less than seventy-five percent (75%) of the Lots or by the Board shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this **Section 15.3**. Any amendment made by the Declarant shall be signed by the Declarant and Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon Recording of the amendment.

**ARTICLE 16**  
**MISCELLANEOUS**

**16.1 Interpretation of the Covenants**

Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction of interpretation of the provisions hereof shall be final, conclusive, and binding as to all Persons and property benefited or bound by the Covenants and provisions hereof. In the event of any conflict between this Declaration and the Articles, and the Bylaws, this Declaration shall control. In the event of any conflict between the Bylaws and the Rules or the Design Guidelines, the Bylaws shall control.

**16.2 Severability.**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions thereof.

**16.3 Change of Circumstances.**

Except as otherwise expressly provided in this Declaration, no change or conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**16.4 Perpetuities and Restraints on Alienation.**

If any of the options, privileges, Covenants, or rights created by this Declaration shall be unlawful, void, or violable for violation of the rule against perpetuities, then such provision shall continue until twenty-one (21) years after the death of the last living survivor of the now living descendants of the President of the United States on the date hereof.

**16.5 Laws, Ordinances, and Regulations.**

The Covenants, Conditions, and Restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Declarant, the Board, or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances, and regulations. The compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances, and regulations.

Any violation of any state law, municipal law, local law, ordinance, or regulations pertaining to the ownership, occupation, or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**16.6 Rules and Regulations.**

In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided said rules and regulations are not expressly inconsistent with the provisions of this Declaration.

**16.7 References to the Covenants in Deeds.**

Deed to, and instruments affecting, any Lot or Tract or any part of the Property may contain the Covenants herein set for by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee/Owner or other Person claiming through any instrument and his heirs, executors, administrators, successors, and assigns.

**16.8 Gender and Number.**

Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the plural; and words in the plural shall include the singular.

**16.9 Captions and Titles.**

All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

**16.10 Notices.**

If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**16.11 Waiver.**

The waiver of or failure to enforce any breach or violation of this Declaration will not be deemed a waiver or abandonment of any provision of the Declaration or a waiver of the right to enforce any subsequent breach or violation of the Declaration. The foregoing shall apply regardless of whether any Person affected by the Declaration (or having the right to enforce the Declaration) has or had knowledge of the breach or violation.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

Enchanted Hills Development Company, LLC  
a New Mexico limited liability company

By:   
Carey A. Plant, Secretary

STATE OF NEW MEXICO     )  
  ) ss.  
COUNTY OF SANDOVAL     )

The foregoing document was acknowledged before me on July 8<sup>th</sup>, 2019, by Secretary of Enchanted Hills Development Company, LLC, a New Mexico limited liability company, on behalf of said company.

  
NOTARY PUBLIC



OFFICIAL SEAL  
Alexandra N. Lopez  
NOTARY PUBLIC - STATE OF NEW MEXICO

My Commission Expires August 16, 2022



**EXHIBIT "A"**

**Legal Description of Property**

Lots numbered One (1) through Thirty-Five (35) of Block 1; Lots numbered One (1) through Sixteen (16) of Block 2; and Lots numbered One (1) through Eight (8) of Block 3, all in the 35 NORTH subdivision as the same are shown and designated on the plat entitled "35 NORTH, A SUBDIVISION OF LOTS 1 AND 2, BLOCK 'A' ENCHANTED HILLS UNIT 11A AND LOT 1, BLOCK 'A' AND LOT 1, BLOCK 'B' ENCHANTED HILLS UNIT 14B WITHIN RIO RANCHO ESTATES UNIT TWENTY WITHIN SECTION 15, TOWNSHIP 13 NORTH, RANGE 3 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico on June 18, 2019, in Book 3, Page 4397 (Rio Rancho Estates Book 28, Pages 98-100.) as Document No. 2019P01393.

**EXHIBIT "B"**

**Legal Description of the HOA Tracts**

Tract A and Tract B of Block 1; and Tract C of Block 3, all in the 35 NORTH subdivision as the same are shown and designated on the plat entitled "35 NORTH, A SUBDIVISION OF LOTS 1 AND 2, BLOCK 'A' ENCHANTED HILLS UNIT 11A AND LOT 1, BLOCK 'A' AND LOT 1, BLOCK 'B' ENCHANTED HILLS UNIT 14B WITHIN RIO RANCHO ESTATES UNIT TWENTY WITHIN SECTION 15, TOWNSHIP 13 NORTH, RANGE 3 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF RIO RANCHO, SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico on June 18, 2019, in Book 3, Page 4397 (Rio Rancho Estates Book 28, Pages 98-100.) as Document No. 2019P01393.