

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CANYON RIDGE

RIO ARRIBA

J. FRED VIGIL, COUNTY CLERK

200802363

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TABLE OF EXHIBITS

Exhibit

Subject Matter

“A”

Land Initially Submitted

“B”

Additional Property

“C”

By-Laws of Canyon Ridge Homeowners' Association

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CANYON RIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON RIDGE ("Declaration") is made as of the date set forth on the signature page hereof by Rare Earth New Mexico, LLC, a North Carolina limited liability company (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Canyon Ridge Homeowners' Association, a New Mexico non-profit corporation (the "Association") to own, operate and maintain Common Areas, to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below), and to function as the property owners association in the Development.

Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Additional Property": All of that certain real property which is more particularly described on Exhibit "B," which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2 "Area of Common Responsibility": The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, the Code, or other applicable covenant, contract, or agreement.

1.3 "Articles of Incorporation" or "Articles": The Articles of Incorporation of Canyon Ridge Homeowners' Association as filed with the New Mexico Public Regulation Commission, as they may be amended.

1.4 "Association": Canyon Ridge Homeowners' Association, a New Mexico non-profit corporation, its successors and assigns, serving as the property owners association for the development.

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1.5 "Association Rules": The rules and regulations promulgated by the Board pursuant to Section 10.2, and governing and restricting use of the Properties, including, without limitation, (i) rules regulating the use of the Common Area; (ii) rules regarding use of the Private Streets; and (iii) other rules adopted by the Board regulating use of the Properties.

1.6 "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under New Mexico corporate law.

1.7 "Builder": Any Person who purchases one or more Lots for the purpose of constructing improvements thereon for later sale to consumers or who purchases one or more parcels of land within the Properties for further development, and/or resale in the ordinary course of such Person's business. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.8 "By-Laws": The By-Laws of the Association attached as Exhibit "C," as they may be amended.

1.9 "Canyon Ridge" or the "Development": That certain residential and recreational community located in Rio Arriba County, New Mexico, and commonly known and referred to as Canyon Ridge. Declarant may change the name of the Development at any time.

1.10 "Code": The codes and regulations of Rio Arriba County, New Mexico. Notwithstanding any other provision contained herein, the standards, terms and conditions of the Code are incorporated herein by reference and shall apply to all Lots in addition to the Declaration. In the event a conflict exists between the Declaration and the Code, the more strict of the conflicting provisions shall control. "More strict" means the provision which imposes the highest standard with respect to construction, landscaping or other matters. Notwithstanding the foregoing, in the event the Code is amended, improvements approved hereunder and existing within Canyon Ridge prior to the date of such amendment shall not be subject to modification under any such amendment.

1.11 "Conservation Area": Those portions of the Properties designated as a "Conservation Area" on certain Lots as depicted by a recorded subdivision plat recorded in the Public Records by the Declarant, as more specifically set forth in Section 10.21 herein.

1.12 "Conservation Trust": One or more nonprofit entities that may be designated by the Declarant that are qualified to hold conservation easements within or adjacent to the Properties pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor statute.

1.13 "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term also shall include any Exclusive Common Area, as defined below. The term "Common Area" shall specifically exclude any real property that is subject to a conservation easement that may be conveyed to or controlled by a Conservation Trust or other similarly qualified organization, notwithstanding the fact that the Association may have maintenance responsibility over such real property as more particularly set forth in Section 10.22 below.

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1.14 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.15 "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board and the Design Review Board (DRB).

1.16 "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or leasehold owner of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or leasehold owner of such property.

1.17 "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday in the State of New Mexico or the United States of America, then such time period shall be automatically extended to the close of business on the next regular business day.

1.18 "Declarant": Rare Earth New Mexico, LLC, a North Carolina limited liability company, or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

1.19 "Declarant-Related Entity": Any Person or entity which is a parent, subsidiary or affiliate of the Declarant, and/or in which the Declarant or any parent, subsidiary or affiliate of the Declarant or any officer, director, shareholder, partner, member, manager, or trustee of any of the foregoing owns, directly or indirectly, not less than fifty percent (50%) of such entity.

1.20 "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.21 "Development Period": The period of time during which the Declarant or any Declarant-Related Entity owns any property which is subject to this Declaration, any Additional Property or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.22 "Disclosure Statement": The Disclosure Statement for Canyon Ridge, as prepared and recorded for each phase or tract of the subdivision, as it may be amended or supplemented from time to time. The Disclosure Statement for Tract 1 is recorded in the Public Records as Instrument Number 200800424.

1.23 "Equestrian Center": That certain portion or portions of the Properties that may, without obligation, be designated by Declarant on a recorded subdivision plat or a Supplemental Declaration for use for equestrian activities. Such activities may include, without obligation or limitation, stables, barns, tack rooms, training areas, bridle trails, pastures and related equestrian amenities.

- 1.24 “DRB”: The Design Review Board, as described in Section 9.2.
- 1.25 “Exclusive Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Villages or Lots, as more particularly described in Article 2.
- 1.26 “General Assessment”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.
- 1.27 “Governing Documents”: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, Association Rules, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.
- 1.28 “Lot”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, casitas, condominium units created pursuant to a declaration of condominium recorded or authorized by the Declarant, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include property owned by the Association, any Village Association, or property dedicated to the public.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.29 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.30 “Master Plan”: The land use plan or development plan for “Canyon Ridge,” dated November 1, 2007, and prepared by Tim Newell, as such plan may be amended from time to time, which includes the property described on Exhibit “A” and all or a portion of the Additional Property described on Exhibit “B” that Declarant may, but is not required to subject to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit “B” from the Master Plan bar its later annexation in accordance with Article 7.

1.31 “Member”: A Person subject or entitled to membership in the Association pursuant to Section 3.1.

1.32 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.33 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.34 "Occupant": The Owner(s) or lessee(s) of any Lot and their respective guests, family members, tenants and invitees or any other Person who either lawfully or unlawfully occupies or comes upon such Lot.

1.35 "Owner": One or more Persons who hold the record title to any Lot, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of the Owner.

1.36 "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.37 "Private Amenity": Certain real property and any improvements and facilities which are owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes and which are made available to Owners. Any Private Amenity shall be designated by the Declarant at any time in its sole discretion. The use of the term "Private Amenity" shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

1.38 "Properties": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.39 "Public Records": The County Clerk of Rio Arriba County, New Mexico or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.40 "Shared Well Agreement": A document known as a "Declaration of Shared Well Agreement" or by another similar name that is to be recorded in the Public Records upon installation of wells to serve one or more Lots that imposes additional restrictions of record on such Lots. By its terms, the Shared Well Agreement shall run with the land and be binding upon and inure to the benefit of all parties having any right, title, or interest in or to the property described in the Shared Well Agreement, or any part thereof, and their heirs, successors and assigns.

1.41 "State Engineer": The New Mexico Office of the State Engineer is charged with administering New Mexico's water resources, including those within Canyon Ridge. The State Engineer has power over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including streams and rivers that cross state boundaries.

1.42 "Special Assessment": Assessments levied in accordance with Section 8.5.

1.43 "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.44 "Supplemental Declaration": An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Villages, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.45 "Village": A separately developed area within the Properties, whether or not governed by a Village Association (as defined below), in which the Owners of Lots may have common interests other than those common to all Owners or Members of the Association. For example, and by way of illustration and not limitation, a grouping of single-family homesites such as the proposed casitas,

attached or detached dwellings may constitute a separate Village, or a Village may be comprised of more than one housing type with other features in common and may include noncontiguous parcels of property. Village boundaries may be established and modified as provided in Section 3.2.

1.46 "Village Assessments": Assessments levied against the Lots in a particular Village or Villages to fund Village Expenses, as described in Sections 8.1 and 8.3.

1.47 "Village Association": Any owners association having concurrent jurisdiction with the Association over any Village.

1.48 "Village Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Village or Villages, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Village(s).

ARTICLE 2: PROPERTY RIGHTS

2.1 Common Area. Every Member shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.4;
- (d) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to the provisions of this Section 2.1 and any approval requirements set forth in the Governing Documents;
- (f) The right of the Board to adopt, amend and repeal the Association Rules, and other rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (g) The right of the Board to restrict or limit Builders from having access to all or any portion of the Common Area, even if the Builders are Owners;
- (h) The right of the Board to suspend or terminate the right of a Member to use any of the Common Area and Exclusive Common Area pursuant to Section 4.3. Additional rules and procedures governing a Member's right to use the Common Area are set forth in the Association Rules which may be promulgated by the Association from time to time;

(i) The right of the Association to rent, lease or reserve any portion of the Common Area including, without limitation, the proposed Equestrian Center to any Member for the exclusive use of such Member and his or her respective lessees, invitees, and guests upon such conditions as may be established by the Board;

(j) The right of the Board to impose reasonable requirements and charge reasonable use fees or admission charges to Members for the use of any facility situated upon the Common Area;

(k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13;

(l) The right of the Declarant during the Development Period to permit non-member guests of the Association or officers, directors or employees of the Association to use the Common Area pursuant to Article 13 and upon such terms and conditions as may be determined from time to time by the Declarant;

(m) The right of the Declarant during the Development Period to permit prospective Lot purchasers in the Development to use the Common Area on such terms and conditions, as may be determined from time to time by the Declarant; and

(n) The right of the Declarant during the Development Period, from time to time, to restrict use of all or a portion of the Common Area for maintenance or other special events.

Any Member may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to the Association Rules. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot; provided however, the Owner shall remain responsible for payment of all assessments and other charges.

The Declarant shall transfer title of the Common Area to the Association prior to or on the date of expiration of the Development Period. The Declarant is not precluded from conveying property to the Association prior to such date. Once conveyed to the Association, the Common Areas shall become property of the Association. Declarant shall not be required to adhere to any established order of commencement and completion of amenities or other improvements to the Common Areas, and the reference by this Declaration to the recreational amenities shall not be deemed a representation by the Declarant or any other party that any such feature or amenity will be included within the Development.

Declarant plans to, but is not obligated to, construct the Equestrian Center within the Properties, subject to, among other items, the development of future phases of the Properties, the obtaining of governmental approvals, and the development plans of Declarant. Should Declarant construct the Equestrian Center, Declarant shall convey the Equestrian Center to the Association, and the Equestrian Center shall become Common Area, subject to the Association Rules and fees that may be imposed by the Association. The costs of operation and maintenance of the Equestrian Center will be the responsibility of the Association and after transfer will be a Common Expense.

2.2 Mortgages. Each Owner shall have the right, subject to the provisions hereof, to impose a Mortgage upon or against such Owner's Lot. However, no Owner shall have the right or authority to make, create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting any other portion of the Development.

2.3 Private Streets. Every Owner and Member shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the

Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The Private Streets are expected to be a gravel surface. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;
- (c) The right of the Declarant to dedicate all or any part of Private Streets;
- (d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and
- (e) The rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.4 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Lots or Villages. By way of illustration and not limitation, Exclusive Common Areas may include entry features, certain recreational facilities, wells, wastewater systems, roads, and other portions of the Common Area within or specially servicing a particular group of Lots, Village or Villages. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Lots to which the Exclusive Common Areas are assigned either as a Village Assessment or as a Specific Assessment, as applicable.

During the Development Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, by (i) the deed by which the Common Area is conveyed to the Association; (ii) this Declaration; (iii) any Supplemental Declaration and/or (iv) designation on the recorded subdivision plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Villages during the Development Period. After the Development Period, a portion of the Common Area may be assigned as Exclusive Common Area of particular Lots or a particular Village or Villages and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members holding a Majority of the total Class "A" votes in the Association, including, if applicable, a Majority of the Class "A" votes within the Village(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Village(s) to which the Exclusive Common Area is to be assigned or reassigned. Any reassignment of an Exclusive Common Area shall be set forth in a Supplemental Declaration executed by the Declarant and/or the Board, as appropriate, or shall be shown on a revised recorded subdivision plat relating to such Exclusive Common Area.

The Association may, upon approval of a Majority of the Class "A" votes within the Village(s) to which any Exclusive Common Area is assigned, permit other Members to use all or a portion of such

Exclusive Common Area upon payment of reasonable use fees, which fees shall be used to offset the Village Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.5 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.6 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Members in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Member shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members holding at least sixty-seven percent (67%) of the Class "A" votes of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the DRB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

2.7 View Impairment. Neither the Declarant, any Declarant-Related Entity, the Association, nor the owners of any Private Amenities, guarantees or represents that any view will exist or persist from Lots over and across the Common Area. The Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Common Area from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Common Area.

2.8 Private Amenities. Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or occupancy of a Lot. All Persons, including all Owners and Occupants, are hereby advised that no representations or warranties have been or are made by the Declarant, any Declarant-Related Entity, the Association, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall

be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership and Voting. The Association shall have two (2) classes of membership, Class "A," and Class "B."

(a) Class "A". Every Owner, except the Class "B" Member, if any, shall be a Class "A" Member of the Association. There shall be only one (1) membership per Lot. Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under this Section 3.1. There shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint the members of the Board of Directors until the first to occur of the following:

(i) completion of construction has occurred (as defined in Section 9.6 below) for the primary dwelling on ninety percent (90%) of the Lots permitted by that certain Master Plan, as amended from time to time, for the property described on Exhibits "A" and "B";

(ii) December 31, 2028; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns. After termination of the Class "B" membership, the Declarant shall have a right to disapprove actions of the Board, the DRB, and committees as provided in the Declaration.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership, with such rights, privileges and obligations as may be specified in such Supplemental Declaration.

3.2 Villages. Every Lot shall be located within a Village; provided, however, unless and until additional Villages are established, the Properties shall consist of one Village. The Declarant, in its sole discretion, may establish Villages within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a recorded subdivision plat. During the Development Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration, or any recorded subdivision plat from time to time to assign property to a specific Village, to redesignate Village boundaries, or to remove property from a specific Village.

The Lots within a particular Village may be subject to additional covenants and/or the Owners within the Village may be members of a Village Association in addition to the Association. However, a Village Association shall not be required except as required by law. Any Village which does not have a Village Association may, but shall not be obligated to, elect a Village Committee, as described in the By-

Laws, to represent the interests of Owners of Lots in such Village. No Village Association or Village Committee shall be formed or otherwise established without the prior submission to and written approval of Declarant of all documents creating or establishing such Village Association or Village Committee.

Any Village may request that the Association provide a higher level of service or special services for the benefit of Lots in such Village and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Lots within the Village, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Lot to all Villages receiving the same service), shall be assessed against the Lots within such Village as a Village Assessment pursuant to Article 8 hereof.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and the Association Rules as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and all applicable laws.

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation dredging or otherwise removing silt from any body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners.

The Association agrees that the Common Area, including all improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, or adequacy of the size or capacity in relation to utilization or the future economic performance or operations of the Common Area. No claim shall be made by the Association or any Member relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.24 of the By-Laws. Such sanctions may include, without limitation:

- violator;
- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;
 - (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
 - (c) suspending a Member's right to vote;
 - (d) suspending any Person's right to use and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and
 - (e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment fee, dues payment or other charge owed to the Association.

In the event that any Occupant of a Lot or any guest or invitee of a Member violates the Governing Documents, the Board may sanction such Occupant, guest or invitee, the Member sponsoring the guest or invitee, and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed pursuant to the Association Rules, the fine may first be assessed against the violator; provided however, if the fine is not paid by the violator within the time period set by the Board, the Member shall pay the fine upon notice from the Board. Suspension of the right to use Association facilities or the imposition of any other sanction shall not relieve the Owner or Member of the responsibility to pay assessments imposed pursuant to Article 8 and other financial obligations to the Association.

In addition, the Board may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments, fines, and other charges, the abatement of nuisances within the Development, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorney's and other legal fees and court costs, incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, state and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Development Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, streets, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner of such property consents. This Section shall not be construed as a representation by the Declarant that such sites for governmental facilities will be part of the Development.

4.6 Indemnification. The Association shall indemnify every officer, director, DRB member and committee member against all damages, liabilities, and expenses, including reasonable attorney's and other legal fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, DRB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and New Mexico law.

Each officer, director, DRB member and committee member shall not be liable for any mistake of judgment, negligent or otherwise, except for his or her own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, DRB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, DRB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, DRB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, DRB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance pursuant to Section 6.1 below to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to any local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

4.8 Security. Each Owner and Occupant of a Lot and each Member, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No

representation or warranty is made that any fire protection system, burglar alarm system or other security system or measure, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner and Member acknowledges, understands and covenants to inform its tenants and all Occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 Restricted Access Fence and Gates. Access to all or any portion of the Properties may, at the Declarant's or the Board's sole discretion, be restricted by a fence and one or more gates located along the perimeter of the Properties. Vehicular access into the Properties may be restricted by electronically operated or other controlled access entry gates located at the entrances into the Properties, and pedestrian access may be restricted by pedestrian gates at other points as well. The restricted access gates may or may not be staffed, at the discretion of the Declarant or Board. Any such gate staffing may be modified or eliminated at any time without notice. Any such gate staffer or any other employee or agent of the Declarant or the Association shall under no circumstances be responsible for the security or safety of any persons or property within Canyon Ridge, nor shall the Association or any Owner, Occupant or Member be authorized to direct or request favors of any such persons. The use and operation of any restricted access fence and gate may be limited or eliminated from time to time by the Declarant or the Board.

4.10 Trails. Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Area, and certain Lots pursuant to Section 11.7 below, to be used as trails for pedestrian use, recreational biking, cross-country skiing, snowmobiling, equestrian uses and other related uses ("trail system"). Declarant reserves the right to restrict the use of certain pathways and trails to specific uses or to otherwise prohibit certain uses, for example, without limitation, certain pathways and/or trails may be designated for equestrian uses only while the use of certain pathways and/or trails for equestrian purposes may be prohibited. Notwithstanding the foregoing, any trails traverse upon a Lot shall be restricted to pedestrian uses (such as walking or hiking) except with the written consent of the Owner of such Lot. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail system by Declarant, the Association, its Members and their tenants, Occupants, guests and invitees, the owner of any Private Amenity and its invitees.

4.11 Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.12 Powers of the Association Relating to Village Associations. The Association may veto any action taken or contemplated by any Village Association which the Board of the Association reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Village Association to fulfill its obligations and responsibilities under any of the Governing Documents. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Village Association. If the Village Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Village Association and assess the Lots within such Village for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.13 Provision of Services. The Association may provide services and facilities for the Class "A" Members and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense applicable to Class "A" Members only or a Village Expense, depending on whether the service or facility is provided to all Lots or only the Lots within a specified Village. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities.

The Association may also provide services for the benefit of all Members and their guests and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense applicable to the Members. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. By way of example, some services and facilities which may be provided include concierge services to Members, activity director services and similar services.

The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.14 Presence of Wildlife. Each Owner, Member, and Occupant and each tenant, guest and invitee of any Owner, Member, or Occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife, including without limitation, coyotes, wolves, bears, and snakes. Neither the Association and its Board, nor the Declarant, including its successors and assigns, shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner, Member, and Occupant and each tenant, guest, and invitee of any Owner, Member, or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the Declarant and its successors and assigns have made no representations or warranties relative to the presence of such wildlife, nor has any

Owner, Member or Occupant, or any tenant, guest, or invitee of any Owner, Member, or Occupant relied upon any such representations or warranties.

4.15 Open Space and Cliffs. Neither the Association, the original Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason of use of any open spaces or areas including, without limitation, cliffs and other steep grades, located within and/or adjacent to the Properties ("open spaces"), for any purpose by Owners, their invitees, licensees, and tenants. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Lot that the Association, its Board of Directors, or any committees, the DRB, the Declarant and any successor Declarant are not insurers of safety within the open spaces and that each Person using any open spaces shall do so only in accordance with any rules adopted by the Board and applicable governmental laws, ordinances, rules and regulations. Each Person assumes all risks of personal injury, and loss or damage to property resulting from or associated with use of any open spaces.

ARTICLE 5: MAINTENANCE

5.1 Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all Common Area;
- (ii) all entry features, private streets, and pedestrian and equestrian pathways, trails and the Equestrian Center that may be situated upon the Common Area;
- (iii) all furnishings, equipment and other personal property of the Association;
- (iv) any facilities that are situated upon the Common Area; and
- (v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, the Lots, prior to issuance of a certificate of occupancy for any dwelling upon the Lot, as more particularly set forth in Section 8.6(d) below, or property dedicated to the public. The Association may also provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall clear the Private Streets of snow as much as reasonably possible and customary given the gravel surface of the roads, but certain weather situations may arise that preclude the Association from conducting snow removal activity on all or a portion of the Private Streets; at those times access to Lots may not be possible. Driveways within Lot boundaries shall be the responsibility of the Owner of the Lot and not of the Association.

(c) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding

seventy-five percent (75%) of the combined total of Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

(d) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Village Association or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(e) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Members as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be either (i) a Village Expense assessed as a Village Assessment solely against the Lots within the Village(s) to which the Exclusive Common Areas are assigned, or (ii) a Specific Assessment against the particular Lots to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder. If all Lots within a Village have similar Exclusive Common Areas, the Association may cumulate such expenses and assess the costs as Village Assessments against all Lots within such Village.

(f) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, without obligation, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Village Association. In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.6(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.

5.3 Village's Responsibility. Upon resolution of the Board of Directors, the Owners of Lots within each Village shall be responsible for paying, through Village Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Village. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Village and adjacent private streets within the Village,

regardless of ownership or the Person performing the maintenance; provided however, all Villages which are similarly situated shall be treated the same.

Any Village Association having responsibility for maintenance within a particular Village pursuant to additional covenants applicable to such Village shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If the Village Association fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Lots within such Village as provided in Section 8.6.

5.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association, any Owner nor any Village Association shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Cost Sharing Agreements. The Association may enter into Cost Sharing Agreements with the owners or operators of portions of properties adjacent to the Properties including without limitation the owner of any Private Amenity and/or Conservation Trust.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1 Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence and at least two million dollars (\$2,000,000.00) general aggregate with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and/or employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected improvements and other insurable property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Village in such amounts and with such coverages as the Owners in such Village may agree upon pursuant to Section 3.2. Any such policies shall provide for a certificate of insurance to be furnished to the Village Association and to the Owner of each Lot insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Village shall be charged to the Owners of Lots within the benefitted Village as a Village Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Village Assessment of the Village(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Village Expense and assessed in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss resulted from the negligence or willful misconduct of one or more Owners, Members, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) or Members and, if applicable, their Lots pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in Rio Arriba County, New Mexico.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request by the Member. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of New Mexico which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefited parties. Policies covering the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Village shall be for the benefit of the Owners of Lots within the Village and their Mortgagees, as their interests may appear;

(3) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(6) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners and Members as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, the Owners and their tenants, servants, agents, and guests and the Members and their guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners or Members, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' or Members' individual policies from consideration under any "other insurance" clause;

(5) a cross-liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least seventy-five percent (75%) of the Class "A" votes in the Association, and during the Development Period, the Declarant, decide within sixty (60) Days after the loss either (i) not to repair or reconstruct or (ii) to construct alternative improvements.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Village, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Members responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either the Village Association (if any) for the Village in which the Lot is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Lot and the Owner thereof pursuant to Section 8.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall also apply to any Village Association that owns common property within the Village in the same manner as if the Village Association was an Owner and the common property was a Lot. Additional recorded covenants applicable to any Village may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Village and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's immediate household or any invitee or guest of a Member for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association or sustained outside of the Area of Common Responsibility, the Common Area, or other area maintained by the Association that results from any action occurring within the Area of Common Responsibility, the

Common Area or other area maintained within the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Area of Common Responsibility, the Common Area or in individual Lots.

Each Owner, by virtue of the acceptance of title to his or her Lot, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation by Declarant. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Village Assessments. Such additional covenants and

easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) General Assessments to fund Common Expenses; (b) Village Assessments for Village Expenses benefiting only Lots within a particular Village or Villages; (c) Special Assessments as described in Section 8.5; and (d) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

Assessments will be charged to Class "A" Members. With respect to Class "A" Members, all assessments, and other charges, together with interest, late charges, costs of collection, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each such assessment, fine, or charge, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. If multiple Persons own a Lot, then each Owner of the Lot shall be jointly and severally liable for payment of such assessment, fine, or charge. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments, fines, and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner or Member liable for any type of assessment a written statement signed by an officer of the Association or a designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners or Members with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Village Assessment shall be due and payable in advance on the first day of each fiscal year. If any Member is delinquent in paying any assessments or other charges, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner or Member may exempt himself or herself from liability for assessments by non-use of all or any portion of Common Area, such as, without limitation, any recreational facilities that are part of the Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of

his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner or Member. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

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

8.2 Computation of General Assessments. At least forty-five (45) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4. For so long as the Class "B" membership exists, Common Expenses shall not include any expenses incurred for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the Class "A" votes of the Association and by the Class "B" Member.

General Assessments shall be levied equally against all Lots subject to assessment. The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years or any assessment income expected to be generated from any additional Lots reasonably anticipated to be subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future sums due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Class "A" Member at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least seventy-five percent (75%) of the combined total of Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall

send a copy of the revised budget to each Class "A" Member at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

8.3 Computation of Village Assessments. At least forty-five (45) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Village Expenses for each Village on whose behalf Village Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Village Assessment. Any Village may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.2, any additional costs shall be added to such budget. Such budget may include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Village Expense, if any, within the Village. Village Expenses shall be allocated equally among all Lots within the Village(s) benefitted thereby and levied as a Village Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Village Assessment for the coming year to be delivered to each Owner of a Lot in the Village at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Lots in the Village to which the Village Assessment applies and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Lots in such Village. This right to disapprove shall apply only to those line items in the Village budget which are attributable to services requested by the Village. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the Owners within any Village disapprove any line item of a Village budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Village budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

All amounts which the Association collects as Village Assessments shall be expended solely for the benefit of the Village for which they were collected and shall be accounted for separately from the Association's general funds.

8.4 Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for both general and Village purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Village budgets reserve amounts sufficient to meet the projected needs of the Association.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses, or against the Lots within any Village if such Special Assessment is for Village Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least seventy-five percent (75%) of the Class "A" votes allocated to Members who will be subject to such Special Assessment and, during the Development Period, by the Declarant. There

shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or Occupants thereof pursuant to a list of special services which the Board may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities), which assessments may be levied in advance of the provision of the benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one or more Lots;

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests or of the Member, its agents, employees, licensees, invitees or guests;

(d) to cover the costs of any unpaid fees for services used by the Owner and any family member, tenant, Occupant or guest of the Owner while using the recreational facilities owned by the Association; and

(e) to cover the cost of any unpaid transfer fees due pertaining to the Lot pursuant to Section 8.13 below.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

The Association may also levy a Specific Assessment against the Lots within any Village to reimburse the Association for costs incurred in bringing the Village into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, Association Rules; provided however, the Board shall give prior written notice to the Owners of Lots in the Village and an opportunity for such Owners to be heard before levying any such assessment.

8.7 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of any and all assessments and other charges levied pursuant to the Governing Documents, as well as interest at a rate to be set by the Board (subject to the maximum interest rate limitations of New Mexico law), late charges in such amount as the Board may establish (subject to the limitations of New Mexico law), costs of collection and reasonable attorneys fees. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages), including all extensions, renewals, increases, restatements and

amendments thereto, made in good faith and for value. Such lien may be enforced by suit, judgment, and judicial or non-judicial foreclosure, as permitted by applicable law.

The Declarant or the Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. Owner shall be required to pay to the Association any assessment due for the Lot during the period of foreclosure. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment allocated to the Lot owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. A Mortgagee or other purchaser of a lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due to prior such acquisition of title, and the Association shall, upon written request, execute a release of any lien for such assessment(s). Such unpaid assessments shall remain the personal obligation of the owner of the Lot prior to the foreclosure, and, unless and until collected from such prior owner, shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the later to occur of the following: (i) the date that the Lot is conveyed to a Person other than a Declarant; or (ii) the month that the Board first determines a budget for the Association and levies assessments pursuant to this Article 8. The first annual General Assessment and Village Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence against the Lot and shall be due and payable at closing or, with respect to Builders, upon demand of the Association.

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

8.10 Exempt Property. The following property shall be exempt from payment of General Assessments, Village Assessments, Special Assessments, and Specific Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility;

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes; and

(d) Property owned by any Village Association, or by the members of a Village Association as tenants-in-common, for the common use and enjoyment of all members within the Village.

8.11 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser or Occupant to the working capital of the Association in the amount equal to three (3) months of the then current amount of the annual General Assessment of the Association. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot to the first Owner. Capital contributions shall be used by the Association in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

8.12 Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development Period. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association, or from the working capital contributions collected at the sale of Lots, but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Class "A" Members. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Class "A" Members which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from the working capital contributions or from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

8.13 Transfer Fee. A transfer fee shall be collected from the purchaser of each Lot in an amount, initially, equal to five thousand dollars (\$5,000.00), which amount the Board, with the written consent of the Declarant during the Development Period, may increase from time to time by the recording of a Supplemental Declaration. The transfer fee amount shall be collected and disbursed to the Association at the closing of the purchase and sale of each Lot, except as provided below. Such funds may be used by the Association in its sole discretion. In the event of non-payment of such transfer fee, the amount due shall bear interest and shall be collectible as a Specific Assessment as set forth in Section 8.6(e). The Association may require the purchasing and/or selling Owner to provide reasonable written proof of the applicable sale price, such as executed closing statements, contracts of sale, a copy of the deed, or other such evidence as deemed reasonable in the Association's sole discretion.

Notwithstanding the foregoing, the transfer fee shall not be due and payable for the following transactions (the "Excepted Transactions"):

- (a) the transfer of any Lot by the Declarant or a Declarant-Related Entity to a Builder;
- (b) the transfer of a Lot, or portion thereof, to the spouse of an Owner or to a direct lineal descendant of the Owner;
- (c) the transfer of a Lot, or portion thereof, to a trust whose beneficiaries are solely the spouse and direct lineal descendants of the Owner;
- (d) the transfer of a Lot, or portion thereof, to an entity in which the Owner owns, directly or indirectly, not less than 50.1% of the ownership interests in such entity;
- (e) the transfer of a Lot, or portion thereof, to an entity that owns, directly or indirectly, not less than 50.1% of the ownership interests in Owner;
- (f) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a foreclosure action;
- (g) a Mortgagee acquiring title to a Lot, or portion thereof, pursuant to a conveyance in lieu of foreclosure;
- (h) any transfer for which the Declarant, in its sole discretion, waives in writing the transfer fee; or
- (i) any transfer for which the Association, in its sole discretion, waives in writing the transfer fee.

Except for the Excepted Transactions set forth in items (a) through (h) above (for which no notice shall be required), the transferring Owner shall give the Association at least thirty (30) Days' prior written notice of any transfer which is an Excepted Transaction with sufficient documentation to establish that the transfer is an Excepted Transaction. If the transfer of a Lot, or portion thereof, is deemed in that particular instance to be an Excepted Transaction, the subsequent transfer of that Lot, or portion thereof, shall again be subject to the transfer fee unless such subsequent transfer independently qualifies as a separate Excepted Transaction in accordance with this Section.

ARTICLE 9: DESIGN STANDARDS

9.1 General. No exterior structure or improvement, as described in Section 9.5(a), shall be placed, erected, installed or made upon any Lot or adjacent to any Lot where the purpose of the structure is to service such Lot except in compliance with this Article, and with the prior written approval of the DRB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.2.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer, unless otherwise approved by the DRB in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association while the Class "B" membership exists pursuant to

Section 3.1(b). This Article may not be amended during the Development Period without the Declarant's written consent.

9.2 Design Review Board. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish a DRB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. The DRB shall consist of one or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the DRB. The DRB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. In addition, the DRB may require deposits while construction is pending on any Lot to ensure completion without damage to the Properties.

The DRB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Builders and the Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the DRB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the DRB, who shall thereafter serve and may be removed in the Board's discretion.

9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from roads, trails, or any Private Amenity. The Design Guidelines are intended to provide rules and concepts to Owners and Builders regarding matters of particular concern to the DRB in considering applications hereunder, including, without limitation, site rules governing construction operations occurring within the Properties that may be incorporated as part of the Design Guidelines. The Design Guidelines are not the exclusive basis for decisions of the DRB and compliance with the Design Guidelines does not guarantee approval of any application.

The DRB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. The DRB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The DRB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the DRB for review and approval (or disapproval) along with any required review fee. In addition, information concerning individual wastewater system placement, irrigation systems, wells for water, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the DRB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

Each application to the DRB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the DRB, nor the distribution and review of the plans by the DRB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the DRB shall hold the members of the DRB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon request for approval, the DRB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The DRB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed improvements are consistent with Design Guidelines.

In the event that the DRB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the DRB pursuant to Section 9.8.

Notwithstanding the above, the DRB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval. Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.10 and Section 4.3.

9.4 Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects, Builders and general

contractors must be approved by the DRB prior to engaging in any design or construction activities within the Properties. The DRB may implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, Builder or contractor has been approved by the DRB. Approval of an architect, Builder, or general contractor may be conditioned upon an agreement with the DRB by the architect, Builder, or general contractor to maintain certain insurance coverages required by the DRB, pay construction deposits to ensure completion of a project without damage to the Properties, abide by all Design Guidelines, including, without limitation, all site rules incorporated as a part thereof, and pay fees determined by the DRB, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the DRB. Approval of architects, Builders and contractors shall not be construed as a recommendation of a specific architect, Builder or contractor by the DRB or the Declarant, or as a guarantee or endorsement of the quality or content of work of such architect, Builder or contractor. The criteria and requirements established by the DRB for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder, or contractor. Owner's selection of an architect, Builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the DRB or the Declarant.

9.5 Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work in the area immediately surrounding the building envelope; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of hardscape, such as driveways, walkways, or parking areas; mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; individual wastewater systems; wells; swimming pools; gazebos or playhouses; window air-conditioning units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations. The inclusion of an item on the list in this subsection shall not mean that such items are permitted on the Lots.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the DRB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the DRB. The DRB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) Signs. No sign of any kind shall be erected by an Owner or Occupant without the prior written consent of the DRB, except (1) such signs as may be required by legal proceedings; and (2) not more than one professional security sign of such size deemed reasonable by the DRB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or Occupant within any portion of the Properties, including the Common Area, the exterior of any Lot, or on or within any structure or dwelling located on any Lot or on the Common Area (if such sign would be visible from the exterior of such structure or dwelling as determined in the DRB's sole discretion).

The Declarant and the DRB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than six (6") inches in diameter as measured at a height two (2') feet above the ground shall be removed without the prior written consent of the DRB; except that any trees that are diseased or dead and need to be removed to promote growth of other trees or for safety reasons may be removed without the written consent, but with the prior written notification to, the DRB. The DRB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) Lighting. As more particularly set forth in the Design Guidelines, exterior lighting shall adhere to lighting principles that encourage shielded fixtures, down-lighting, and low intensity illumination as more particularly set forth in the Design Guidelines. Exterior lighting shall not be permitted without the prior approval of the DRB. Notwithstanding the foregoing, seasonal decorative lights during the usual and common season may be installed without prior approval of the DRB, provided that the DRB shall have the right to implement guidelines regarding such displays and to require the cessation of any displays that do not comply with such guidelines. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians or create a nuisance by projecting or reflecting objectionable light onto a neighboring property.

(iv) Temporary or Detached Structures. Except as may be permitted by the DRB, no house, dwelling, garage or outbuilding that is temporary in nature shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(v) Accessory Structures. With the approval of the DRB, detached accessory structures may be placed on a Lot to be used for a guest house, cottage, playhouse, swimming pool, tennis court, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the DRB, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in another location approved by the DRB. All accessory structures shall be located within side and rear setback lines as may be required by the DRB or by applicable zoning law.

(vi) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(vii) Water Service. Declarant shall provide potable water service to each Lot through the installation of a shared well system for which Declarant will obtain permits and will drill wells pursuant to NMSA 1978, §§ 72-12-1 and 72-12-1.1. Wells will be located and clustered to serve multiple Lots, with the number of Lots served depending upon topography, hydrology, well yield, etc. Each well will have a maximum water usage draw of no more than 3 acre-feet per annum, in accordance with regulations promulgated by the State Engineer. The amount of water per Lot will vary based upon the number of Lots connected to each well. Individual wells are not permitted to be drilled by Owners. All water use by each individual Lot will be separately metered, and all Lots and other structures within the Development will be required to use the highest and best technologies available for water conservation purposes. Such technologies include, but are not limited to, water-saving fixtures and