

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR FIESTA II SUBDIVISION**

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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FIESTA II SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FIESTA II SUBDIVISION ("Declaration") is made effective \_\_\_\_\_, 2020, (the "Effective Date") by Sivage Community Development, LLC, a New Mexico limited liability company ("Declarant"). Declarant is the owner of the real property legally described on Exhibit A attached hereto (the "Initial Property")

This Declaration imposes upon the Initial Property, and any other property subsequently annexed (hereinafter the "Properties") mutually beneficial restrictions under a general scheme of development for the benefit of the owners of each portion of the Properties and establishes a procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of the Fiesta II Homeowners' Association, Inc. to own, operate and maintain the Common Area, and to administer and enforce the provisions of this Declaration, the Bylaws and the Use Restrictions promulgated pursuant to this Declaration.

Declarant hereby declares that the Initial Property and all of the other Properties shall be held, sold used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the Properties. 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.

The Properties are a master planned community as that term is defined under NMSA 1978 Section 47-16-2 (Q).

### **ARTICLE I DEFINITIONS**

Capitalized terms shall be defined as set forth below.

1.1. "Annexable Property": The Annexable Property shall mean any property which Declarant has the right, but not the obligation, to subject to these Declarations, which is initially described on Exhibit B.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of the Association as filed with the Secretary of State or its successor organization of the State of New Mexico, as may be amended from time to time.

1.3. "Association": Fiesta II Homeowners' Association, Inc., a New Mexico nonprofit corporation and its successors or assigns.

1.4. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and this Declaration.

1.5. “Builder”: Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of its business.

1.6. “Bylaws”: The Bylaws of the Association, as they may be amended.

1.7. “Common Area”: All real and personal property, including easements and licenses, which the Association owns leases or otherwise holds possessory or use rights in, or assumes responsibility for the common use and enjoyment of the Owners. The initial Common Area is legally described on Exhibit C. During the Declarant Control Period, Declarant shall have the unilateral right to identify Common Area and amend and/or supplement this Declaration to make such identified real property subject to the provision hereof or remove it from the encumbrance of this Declaration, as the case may be.

The term “Common Area” shall include the common areas of the Fiesta Subdivision (herein referred to as the “Fiesta I Common Area”) as defined as “Common Area” in the Declaration of Covenants, Conditions and Restrictions for Fiesta Subdivision recorded as Doc. # 200618473 and pursuant to the Cost Sharing Agreement by and between Fiesta Homeowners’ Association, Inc. and the Association.

The term “Common Area” shall include Neighborhood Common Areas which are for the benefit of the Owners within the Neighborhood where the Neighborhood Common Area is located and shall include Limited Common Areas which are for the sole benefit of the benefitted Owners of the Limited Common Area, all of which are subject to the provisions hereof.

“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, to maintain the Common Area, and such other expenses as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles.

1.8. “Declarant”: Sivage Community Development, LLC, or any successor, or assign who takes title to any portion of the Properties for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant may become a successor Declarant for such areas as it may submit to this Declaration.

1.9. “Declarant Control Period”: shall mean the period commencing upon the recording of this Declaration in the Real Estate Records and ending on the earlier of: (i) latest date allowed by New Mexico Homeowner Association Act (Chapter 47, Article 16 NMSA 1978), as applicable; or (ii) or the date that the Declarant conveys the last Lot to a purchaser, other than a Builder, so that the Declarant no longer owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property. During the Declarant Control Period, the Declarant, or persons designated by the Declarant, may appoint and remove the officers and directors of the Board subject to Section 3.2.

1.10. “Declarant Reserved Rights”: shall mean those rights, privileges, duties and obligations set forth herein that remain in the absolute control of the Declarant and are not subject to the Association’s control or purview. At the end of the Declarant Control Period, the Declarant Reserved Rights shall transfer to the Association; provided that, the Declarant may transfer or assign any one or more of the Declarant Reserved Rights to the Association at an earlier date upon the Declarant’s election in its sole discretion.

1.11. “Design Guidelines and Architectural Control Committee Rules”: The design and construction guidelines, Architectural Control Committee Rules, and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX, which may include the Fiesta II Subdivision Design Guidelines adopted in \_\_\_\_\_, as they may be amended from time-to-time.

1.12. “Governing Documents”: This Declaration, the Bylaws, the Articles, the Design Guidelines and Architectural Control Committee Rules, and the Use Restrictions.

1.13. “Limited Common Area”: Common Area which benefits less than all of the Owners.

1.14. “Limited Common Expenses”: Limited Common Expenses shall mean Common Expenses incurred for the benefit of less than all of the Owners, which may include a reasonable reserve for capital repairs and replacements.

1.15. “Limited Common Maintenance Assessment”: Limited Common Maintenance Assessment shall mean Maintenance Assessments levied on less than all of the Owners subject to assessment under Article VIII to fund Limited Common Expenses for the general benefit of all Lots benefiting from a Limited Common Area.

1.16. “Lot”: A portion of the Properties, whether improved or unimproved, developed or not developed, 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. In the case of a building within a condominium or other structure containing multiple dwellings owned individually, each dwelling shall be deemed to be a separate Lot.

1.17. “Maintenance Assessment”: Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots.

1.18. “Member”: A Person subject to membership in the Association pursuant to Article III.

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

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

1.21. “Mortgagor”: Any Person who gives a Mortgage.

1.22. “Neighborhood”: Each separate residential area as may be designated by Declarant within the Properties, Neighborhoods may have Neighborhood Common Areas, the cost of maintenance of which are Neighborhood Common Expenses which are funded by Neighborhood Maintenance Assessments. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood subject to division into more than one Neighborhood upon development, or combination with other Neighborhoods.

1.23. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the Bylaws). Neighborhood boundaries may be established and modified as provided herein.

1.24. “Neighborhood Common Area”: Neighborhood Common Area shall mean Common Area which the Association owns, leases or controls and maintains for a specific Neighborhood, the expenses of which maintenance is assessed to the Owners of Lots within the Neighborhood. Any Neighborhood Common Area is a Limited Common Area.

1.25. “Neighborhood Common Expenses”: Neighborhood Common Expenses shall mean Common Expenses incurred for the benefit of the Lots within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements.

1.26. “Neighborhood Maintenance Assessment”: Neighborhood Maintenance Assessment shall mean Maintenance Assessments levied on all Lots within a Neighborhood subject to assessment under Article VIII to fund Neighborhood Common Expenses for the general benefit of all Lots within the Neighborhood.

1.27. “Owner”: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded New Mexico Real Estate Contract, the purchaser shall be considered the Owner.

1.28. “Person”: A natural person, a corporation, a partnership, limited liability company, a trustee, or any other legal entity.

1.29. “Quorum”: A quorum at any meeting shall be the presence in person or by proxy of at least fifty-one (51%) of the Owners qualified to vote.

1.30. “Properties”: The Initial Property, together with such additional property as is subjected to this Declaration.

1.31. “Real Estate Records”: The real estate records of the County Clerk of Valencia County, New Mexico.

1.32. “Reimbursement Assessment”: Assessments levied in accordance with Section 8.6.

1.33. “Special Assessment”: Assessments levied in accordance with Section 8.5.

1.34. “Subdivision Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

1.35. “Supplemental Declaration”: An instrument filed in the Real Estate Records pursuant to Article VII which subjects additional property to this Declaration, designates Neighborhoods, Neighborhood Common Area, Limited Common Area, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.36. “Use Restrictions”: Those use restrictions affecting the Properties, which may be adopted, modified and repealed as set forth in Article X.

## **ARTICLE II PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration, other applicable covenants, or any restrictions contained in the Real Estate Records;

(b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(c) The right of the Board to suspend the right of an Owner to use the Common Area, other than for ingress and egress, (i) for any period during which any charge against such Owner's Lot remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and an opportunity to be heard pursuant to the Bylaws;

(d) The right of the Association, acting through the Board, to dedicate, transfer, or mortgage all or any part of the Common Area, or, if after the Declarant Control Period, with the approval of Members representing more than sixty-seven percent (67%) of the Members' vote and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property, except as provided in subsection 2.1(e) hereof;

(e) Declarant, without the approval of the Association, shall have the right to withdraw all or any portion of the Common Area and require the Association to convey same to the Village of Los Lunas, the County of Valencia or any other governmental entity, or to transfer from the Association the maintenance obligation for all or any portion of the Common Area; and

(f) The right of the public to use portions of the Common Area.

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, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, or following expiration of the Declarant Control Period, acting on the written direction of Members representing more than sixty-seven percent (67%) of the total Members votes in the Association and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property or Declarant during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) 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 Declarant, during the Declarant Control Period, and after expiration of the Declarant Control Period, Members representing more than sixty-seventy percent (67%) of the votes available in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

(b) 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 shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.4. Grant of Easements. Notwithstanding anything to the contrary contained herein, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

2.5. Neighborhood Common Area. The provisions of this Article shall be applicable to Neighborhood Common Areas, except that references to the Members shall mean only the Members within the Neighborhood in which the Neighborhood Common Area is located. Where the term Common Area is used in this Declaration, it shall include Neighborhood Common Area however the Neighborhood Common Area shall be for the benefit of the Owners of Lots within the applicable Neighborhood, and all costs associated with the maintenance, operation, inspection, repair and replacement of the Neighborhood Common Area shall be Neighborhood Common



Expenses assessed to the Owners of Lots within the applicable Neighborhood as Neighborhood Maintenance Assessments.

2.6. Limited Common Area. The provision of this Article shall be applicable to Limited Common Areas, except that references to the Members shall mean only the Owners of Lots benefitted by the Limited Common Area. Where the term Common Area is used in this Declaration, it shall include Limited Common Area however the Limited Common Area shall be for the benefit of the Owners of Lots benefiting from the applicable Limited Common Area, and all costs associated with the maintenance, operation, inspection, repair and replacement of the Limited Common Area shall be Limited Common Expenses assessed to the Owners of Lots benefitting from the Limited Common Area.

### **ARTICLE III BOARD COMPOSITION; MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area. The Association shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines and Architectural Control Committee Rules. The Board shall be appointed or elected as provided in this Article III. The Board shall elect the officers. The Board of Directors and officers shall take office upon appointment or election, as applicable.

3.2. Declarant Appointed Board. The Declarant Control Period is in conformance with Section 47-16-8 of the Homeowner's Association Act as of the Effective Date. During the Declarant Control Period, Declarant shall have full authority to appoint and remove officers and directors of the Board; provided:

(a) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots within the Property, and any additional Lots that may be annexed as permitted herein, to Owners other than Declarant or a Builder, at least one director and not less than twenty-five percent (25%) of the Board of Directors shall be elected by the Members other than Declarant or a Builder (the "25% Membership Vote for Director").

(b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots, and any additional Lots that may be annexed as permitted herein, to Owners other than Declarant or a Builder, no less than thirty-three percent (33%) of the Board of Directors shall be elected by the Members other than Declarant or a Builder (the "50% Membership Vote for Director").

(c) Not later than the termination of the Declarant Control Period, the Owners, through Members, shall elect a Board of at least three directors, at least a majority of whom shall be Owners other than Declarant or a Builder.

3.3. Membership. Every Owner shall be a Member of the Association, and such membership shall be appurtenant to and inseparable from ownership of a Lot. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth herein and in the Bylaws, and all such co-Owner shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.4. Voting. Members shall be all Owners and shall have one equal vote for each Lot in which they hold the interest required for membership herein; provided, there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

(a) In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advisement, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

3.5. Limited Common Area and Limited Common Area Voting.

(a) Limited Common Area. Declarant, at Declarant's sole discretion may assign a Lot to benefit from a Limited Common Area. The Lots benefitted by a Limited Common Area may be subject to additional covenants and the Owners may elect a Limited Common Area Committee as described in the Bylaws, to represent the interests of Owners of Lots benefiting from a Limited Common Area. Each Supplemental Declaration filed to subject additional property to this Declaration, may assign the property described therein to a specific Limited Common Area. So long as it has the right unilaterally to annex additional property pursuant to Section 7.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to re-designate Limited Common Area boundaries.

(b) Limited Common Area Voting. On matters concerning any Limited Common Area upon which a Member vote is required, only the Owners of Lots benefitted by the applicable Limited Common Area may vote.

3.6. Neighborhoods, and Neighborhood Voting.

(a) Neighborhoods. Declarant, at Declarant's sole discretion may assign the Lot to a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants and the Owners may elect a Neighborhood Committee as described in the Bylaws, to represent the interests of Owners of Lots in such Neighborhood. Each Supplemental Declaration filed to subject additional property to this Declaration, may assign the property described therein to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right unilaterally to annex additional

property pursuant to Section 7.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to re-designate Neighborhood boundaries; provided, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Lots in the affected Neighborhoods.

(b) Neighborhood Common Area Voting. On matters concerning any Neighborhood Common Area upon which a Member vote is required, only the Owners within the Neighborhood only the Owners of Lots within the applicable Neighborhood may vote.

#### **ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights and obligations of the Owners set forth in this Declaration shall manage and control the Common Area and all improvements thereon (including) without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas, and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Subdivision Standard. The Board is authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate) located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted and maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the Real Estate Records.

4.3. Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with the Homeowner Association Act and procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote (after notice and opportunity to be heard) and to use any recreational facilities within the Common Area, if any. In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity, In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably 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, or in any case where the Board reasonably determines that the benefit to the Association of taking such enforcement action is

outweighed by the resources of the Association which would be extended by the Association in pursuing such enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule, nor prevent an Owner from pursuing such enforcement if owners otherwise have the right to take such action.

4.4. Implied Rights: Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, 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. For so long as Declarant owns any of the Properties or the Annexable Property, Declarant may designate sites within the Properties for public or quasi-public facilities, including public improvement districts (PID). The sites may include Common Areas, 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 consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably 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, or Committee member, except that such obligation to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of matters for which indemnification is prohibited by Section 56-7-1 NMSA 1978, as amended.

4.7. Dedication of Common Area. The Association, or Declarant, may dedicate portions of the Common Area to Valencia County, New Mexico the Village of Los Lunas, New Mexico, or to any other local state or federal governmental or quasi-governmental entity.

4.8. Security. 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 measures, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection, for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its guests, invitees, tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers 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.

4.9. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Subdivision Standard, The Association also shall have the power to require specific action to be taken by any Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties.

The Association shall not have the power to veto action taken by, or to require specific action to be taken by a Neighborhood Committee which impairs the rights of Owners within the Neighborhood with respect to their Neighborhood Common Areas.

## **ARTICLE V MAINTENANCE**

### 5.1. Association's Responsibility.

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

(i) all landscaping and other flora, parks, trails, sidewalks, structures, signage, entry features, and improvements situated upon the Common Area;

(ii) landscaping and signage within public rights of way within or abutting the Properties;

(iii) such portions of any additional property included within the Common Area as may be dictated by this Declaration; any Supplemental Declaration or any contract or agreement for maintenance thereof entered into by the Association;

(iv) any arroyos, and drainage channels located within the Properties which serve as part of the drainage and storm water retention system for the Properties including any retaining walls (earthen or otherwise) retaining water therein, detention ponds, open space and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(v) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Common Area and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(vi) Property dedicated to the public, which the Board determines that such maintenance is necessary or desirable to maintain the Subdivision Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense 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 Common Area pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. The costs associated with Neighborhood Common Areas shall be Neighborhood Common Expenses. The costs associated with Limited Common Area shall be an expense of the Owners benefitted by the Limited Common Area.

(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association. to fulfill such responsibilities. Except as provided above, the Common Area shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any of the Properties.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Lot, respectively; and Limited Common Area benefitting the Owner's Lot, and all structures, parking areas, and other improvements comprising the Lot in a manner consistent with the Subdivision Standard and all applicable covenants. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Reimbursement Assessment. 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.

5.3. 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 Subdivision Standard and all applicable covenants. The Association and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

**ARTICLE VI  
INSURANCE AND CASUALTY LOSSES**

6.1. Association Insurance.

(a) The Association 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) Property insurance for all insurable improvements on the Common Area, if any, and any of the Common Area, regardless of ownership, to the extent that it has assumed such responsibility. Property insurance, if any, shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Common Area, 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 and No/100 Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and 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 Maintenance 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, bond or such other director liability as the Board may deem reasonable and necessary from time-to-time; and

(vi) Such additional insurance in such amounts as the Board, in its best business judgment, determines advisable.

(b) Policy Requirements. Premiums for all Association insurance shall be Common Expenses. The policies may contain a reasonable deductible, and the deductible shall be treated as a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or lessees, then the Board may collect the full amount of such deductible against such Owner(s) and their Lots as a Reimbursement Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of New Mexico;

(ii) be written in the name of the Association as trustee for the benefit of the Association;

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

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement if the policy contains a co-insurance clause.

(c) Damage and Destruction. Improvements, if any, on the Common Area which are damaged or destroyed and are covered by insurance written in the name of the Association, shall be repaired or reconstructed unless Declarant during the Declarant Control Period, or the Members representing at least seventy-five percent (75%) of the votes in the Association and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property, decide within sixty (60) days of the loss not to repair or reconstruct. If 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 Subdivision 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 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 may without a vote of the Members; levy Special Assessments to cover the shortfall.

6.2. Owner's Responsibility. Each Owner covenants and agrees that in the event of damage to or destruction of structures including perimeter walls on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. 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 Subdivision Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

## **ARTICLE VII ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Until all of the Annexable Property has been subjected to this Declaration or Declarant no longer owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the Annexable Property. Declarant may also unilaterally add to the Annexable Property any property which is contiguous to the then existing Annexable Property or any Properties which have previously been made subject to the provisions of this Declaration.

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 Properties and that such transfer is memorialized in a written and recorded instrument executed by Declarant.

Annexation shall be accomplished by filing a Supplemental Declaration in the Real Estate Records describing the property being annexed and shall not require the consent of Members, but it shall require the consent of the owner of the property being annexed, if other than Declarant.



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

7.2. Annexation With Approval of Membership. The Association may subject any real property to the provisions of this Declaration with the consent of the owner of the property being annexed, the affirmative vote of Members representing more than fifty percent (50%) of the Members votes of the Association represented at a meeting with a Quorum duly called for such purpose, and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Real Estate Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by Declarant, if Declarant's consent is required.

7.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it owns any of the Annexable Property for the purpose of removing any portion of the Properties from the coverage of this Declaration; provided such withdrawal is not unequivocally 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 Declarant. If any of the withdrawn property is Common Area, the Association shall consent to such withdrawal.

7.4. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the Properties to additional covenants and easements. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent 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, create new, different, or additional restrictions, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property.

## **ARTICLE VIII 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 three types of assessments: (a) Maintenance Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.5; and (c) Reimbursement Assessments as described in Section 8.6. Maintenance Assessments include Neighborhood Maintenance Assessments to fund Neighborhood Common Expenses for the benefit of Lots within the applicable Neighborhood and Limited Common Maintenance Assessments to fund Limited

Common Expenses for the benefit of Lots benefited by the applicable Limited Common Area. Each Owner, by accepting a deed or entering into a recorded New Mexico Real Estate Contract for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (computed from the due date of such assessment at a rate of fifteen percent (15%) per annum or such higher rate as the Board may establish, subject to the limitations of New Mexico law), late charges in such amount as the Board may establish by resolution, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 8.7. Each assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Owner at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

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

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 with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Maintenance Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his/her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

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

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

8.2. Declarant's Obligation for Assessments. During the Declarant Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold Lots or to pay the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year, which actual

expenditures shall not include the reserve fund. Unless Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Declarant Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

8.3. Computation of Maintenance Assessment. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses including Neighborhood Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

Subject to Section 8.2, Maintenance Assessments shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Maintenance Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. Neighborhood Maintenance Assessments shall be levied equally against all Lots within the applicable Neighborhood. Limited Common Maintenance Assessments shall be levied equally against all Lots benefiting from the applicable Limited Common Area.

So long as the Declarant owns any Annexable Property, Declarant may, but shall not be obligated to, reduce the Maintenance Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be treated as either a contribution or an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the budget and notice of the amount of the Maintenance Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. After the Declarant Control Period, such budget and assessment shall become effective unless disapproved at a meeting by Members representing more than seventy-five percent (75%) of the total Members' votes in the Association and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property. 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 the By Laws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the

budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Common Area, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Maintenance Assessments over the budget period.

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. Following the Declarant Control Period, except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing more than sixty-seven percent (67%) of the total Members' votes allocated to Lots which will be subject to such Special Assessment and the consent of Declarant so long as Declarant owns any Lot in or portion (developed or not developed) of the Properties or the Annexable Property that will be subject to 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. Reimbursement Assessments. The Association shall have the power to levy Reimbursement Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu 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, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot or Limited Common Area 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, provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws before levying any Specific Assessment under this subsection (b).

8.7. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest subject to the limitations of New Mexico law, late charges and costs of collection (including attorney's fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record at the time such lien attaches (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien when delinquent, may be enforced by judicial foreclosure.

The Association may bid for the Lot at foreclosure and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; and (b) no assessment shall be levied on it. 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 except pursuant to foreclosure of a first Mortgage. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.8, including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence for each Owner upon recordation of a deed transferring ownership to such Owner.

All Lots which become subject to Maintenance Assessments before January 1, 2022 shall pay prorated amounts of \_\_\_\_\_ and No/100 Dollars·(\$\_\_\_\_.00) per month through December 31, 2021. Thereafter, the payment of Maintenance Assessments shall be established by the Board.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Maintenance Assessments or whatever other assessments as may be due 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. Common Area and any property dedicated to and accepted by any governmental authority or public utility shall be exempt from payment of Maintenance Assessments and Special Assessments.

8.11. Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Maintenance Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the prorated annual Maintenance Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws.

## **ARTICLE IX ARCHITECTURAL STANDARDS**

9.1. General. No structure shall be placed, erected) or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements and planting or removal of landscaping materials) shall take

place except in compliance with this Article, and approval of the Committee under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval.

This Article shall not apply to the activities of Declarant, nor to improvements to the Common Area by or on behalf of the Association.

This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines and Architectural Control Committee Rules and review of all applications for construction and modifications under this Article shall be handled by the Architectural Control Committee. The members of the Architectural Control Committee need not 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 Board. The Board 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 by the Committee in having any application reviewed by architects engineers or other professionals.

9.3. Architectural Control Committee. The Architectural Control Committee (the "Committee") shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred percent (100%) of the Properties and the Annexable Property has been developed and conveyed to Owners other than Builders, Declarant retains the right to appoint all members of the Committee who shall serve at 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 of such right, the Board shall have the right to appoint the members of the Committee) who shall thereafter serve and may be removed in the Board's discretion.

9.4. Guidelines and Procedures.

(a) Design Guidelines and Architectural Control Committee Rules. Declarant shall prepare the initial Design Guidelines and Architectural Control Committee Rules for the Properties. The Design Guidelines and Architectural Control Committee Rules 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. The Design Guidelines and Architectural Control Committee Rules are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Committee in considering applications hereunder. The Design Guidelines and Architectural Control Committee Rules are not the exclusive basis for decisions of the Committee and compliance with the Design Guidelines and Architectural Control Committee Rules does not guarantee approval of any application. There shall not be a review fee for the initial

plans and specifications submitted by Builders, in all other instances, the initial review fee for any and all submittals to the Architectural Control Committee shall be \_\_\_\_Hundred and no/100ths (\$\_\_\_\_.00). This fee shall be wholly nonrefundable.

The Committee shall adopt such Design Guidelines and Architectural Control Committee Rules at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines and Architectural Control Committee Rules shall be prospective only and shall not apply to or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines and Architectural Control Committee Rules; the Committee is expressly authorized to amend the Design Guidelines and Architectural Control Committee Rules to remove requirements previously imposed or otherwise to make the Design Guidelines and Architectural Control Committee Rules less restrictive.

The Committee shall make the Design Guidelines and Architectural Control Committee Rules available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Guidelines and Architectural Control Committee Rules may be recorded in the Real Estate Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines and Architectural Control Committee Rules was in effect at any particular time.

(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 Committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the Committee 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 things. Decisions of the Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Committee members change over time.

In the event that the Committee 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, provided, however, no approval whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines and Architectural Control Committee Rules unless a variance has been granted in writing by the Committee pursuant to Section 9.6.

Notwithstanding the above, the Committee, 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.

9.5. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring

approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6. Variance. The Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as unusual topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.7. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board, the Committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters the Committee and its members shall be defended and indemnified by the Association as provided in Section 4.6.

9.8. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, and administration expenses may be assessed against the benefitted Lot and collected as a Reimbursement Assessment.

Unless otherwise specified in writing by the Committee granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Reimbursement Assessment.

The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Committee.

9.9. Soils Condition. Declarant, the Association and/or the Committee make no



warranty or representation concerning the soil and/or the characteristics or structural stability of the Properties. Each Owner shall assess the sufficiency of the loadbearing capacity of his or her Lot and the effect of possible soil subsidence upon the structures intended to be placed thereon which are, in part, dependent upon the condition of the underlying soils, the footing, foundation and structural design and plans used for construction on the Lot. Declarant, the Association and/or the Committee shall not be liable should the footing, foundation or structural design or plan of the structures placed on the Properties prove insufficient to prevent structural distress or damage to the structures erected thereon by the Owners caused by soil subsidence, settlement, collapse or expansion. Each Owner agrees to cause construction upon his or her Lot to be in conformity with the recommendations contained within the soils report prepared for the Properties, available at the office of Declarant, or recommendations of an independent soils report prepared by a consultant retained by the Owner.

## **ARTICLE X USE RESTRICTIONS**

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners' quality of living and collective interests, the aesthetics and environment within the Properties and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs and desires within the master planned community and to regulate and control the Common Area. The Properties are subject to the Design Guidelines and Architectural Control Committee Rules, the land development, architectural and design provisions described in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the Use Restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Governing Documents.

10.2. Initial Use Restrictions. The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Section 10.3 hereof.

(a) General. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office to aid Declarant or any Builder owning Lots within the Properties to assist in the sale of the Properties, offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

(b) Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by the Committee:

(i) Parking of any commercial vehicles or equipment, boats, mobile homes, motor homes, recreational vehicles, golf carts, trailers, campers, camper shells, stored vehicles or inoperable vehicles within the Properties unless such vehicles or equipment are appropriately screened as determined by the Committee. If the equipment or vehicles cannot be appropriately screened as determined by the Committee, then such equipment or vehicles shall not be permitted to be parked within the Properties. Construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area, and noncommercial passenger vehicles, including automobiles, pick-ups, vans, and motorcycles may be parked on a Lot. The number of vehicles permitted to be parked upon a Lot shall not exceed the number of off-street parking spaces within the Lot. The Association shall have the right to maintain maintenance vehicles within the Subdivision;

(ii) Raising, breeding or keeping of animals, livestock, or poultry of any kind for commercial purposes is prohibited. A reasonable number of dogs, cats, or other usual and common household pets may be permitted on a Lot. Any pet which is permitted to roam free, or, in the sole discretion of the Board, makes objectionable noise, endangers the health or safety of, or constitutes a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. If the pet owner fails to honor such request the Board may remove the pet. Pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(iii) Any activity which emits foul or obnoxious odors outside the Lot, creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Lots, or tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots;

(iv) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(v) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Lot;

(vi) Outside burning of trash, leaves, debris or other materials;

(vii) Use or discharge of any radio, loudspeaker, horn, whistle bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes;

(viii) Dumping of petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(ix) Accumulation of rubbish, trash, or garbage except between regular garbage

pick ups, and then only in approved containers;

(x) Lawn clippings, yard wastes, and compost piles may be maintained only if screened from the view of any other Lot, roadway, or any portion of the Common Area;

(xi) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right, but not the obligation; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(xii) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and filed in the Real Estate Records, except that Declarant shall be permitted to subdivide or replat Lots which it owns and minor lot line adjustments may be made with the prior written approval of the Committee to remedy encroachments, setback violations, or similar problems;

(xiii) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(xiv) Storage of common household hazardous materials such as gasoline and other fuels, fertilizers, and paint supplies is limited to a reasonable amount of fuel and fertilizer for emergency purposes and ordinary lawn care and supplies for customary home maintenance; provided, the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(xv) Any business or trade may not be maintained within a Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (B) the business activity conforms to all zoning requirements for the Properties; (C) the business activity does not involve regular visitation of the Lot by an inordinate number of clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (D) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Committee.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (A) such activity is engaged in full or part-time; (B) such activity is intended to or does generate a profit, or (C) a license is required.

This subsection shall not apply to development or sales activities by Declarant or a

Builder.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. "Leasing" is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration. The Board may require a minimum lease term of six months. All leases shall be in writing and notice of any lease, together with such any other information required by the Board, shall be given to the Association by the Lot Owner within ten (10) days of execution of the lease. All leases must contain an express provision requiring any tenant or an occupant to abide by this Declaration. The Owner must make available to the tenant copies of the Declaration, Bylaws, and the Use Restrictions.

(xvi) Any construction, erection, or placement of anything, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IX of this Declaration and approval of the Committee. This shall include, without limitation, clotheslines; garbage cans; woodpiles; swimming pools; directional or spot lighting; antennas, satellite dishes, or other apparatus for the transmission or reception of telephone, television, radio, data, satellite, or other signals of any kind; and walls, dog runs, animal pens or fences of any kind.

(xvii) The maintenance on a Lot of plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

(xviii) The maintenance on a Lot of structures, equipment or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair.

(xix) The garages on each Lot must have at least one (1) bay which is open and available for parking of a vehicle at all times except during temporary move-in, remodeling or other reasons permitted by the Board.

(xx) None of the bays of a garage may be converted to heated living space, and garage doors may not be permanently removed and replaced with a solid wall or other permanent facade without a functioning garage door.

(xxi) Excluding Declarant and Builders, no for rent signs may be placed on any Lot.

(xxii) Excluding Declarant and Builders, no more than one (1) for sale sign which shall be no larger than 24 inches by 24 inches shall be placed on a Lot.

(xxiii) Holiday decorations may be displayed for not more than thirty (30) days prior to and thirty (30) days following the officially recognized date of the holiday.

(xxiv) Owners must be present for non-Owners to use amenities within the Common Areas, and at any one time, no more than two (2) non-Owners shall accompany any Owner in using the amenities within the Common Areas without the express written consent of the Board.

10.3. Authority to Promulgate Use Restrictions. Subject to the terms of this Article, the initial Use Restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial Use Restrictions (a "Use Restriction Modification"). The Association shall send notice by mail to all Owners concerning any proposed Use Restriction Modification at least fifteen (15) business days prior to the Board meeting at which such action is to be considered (a "Use Restriction Modification Meeting"). Members shall have a reasonable opportunity to be heard at a Use Restriction Modification Meeting.

(b) The proposed Use Restriction Modification shall become effective unless *disapproved* by a vote of at least seventy-five percent (75%) of the Members at a Use Restriction Modification Meeting with a Quorum, and, so long as Declarant owns any Lot in or portion (entitled or not entitled) of the Properties or the Annexable Property, the consent of Declarant.

(c) A Use Restriction Modification shall become effective and enforceable thirty (30) days after either (i) a copy of the Use Restriction Modification has been mailed to each Owner specifying the effective date or (ii) a copy of the Use Restriction Modification certified by the Board Secretary as having been duly adopted, is recorded in the Real Estate Records.

(d) Nothing in this Article shall authorize the Board or the Voting Members to modify, repeal or expand the Design Guidelines and Architectural Control Committee Rules. In the event of a conflict between the Design Guidelines and Architectural Control Committee Rules and the Use Restrictions and Rules, the Design Guidelines and Architectural Control Committee Rules shall control.

10.4. Owner's Acknowledgment and Notice to Purchasers. All Owners and occupants of Lots are given notice that use of their Lots is limited by the Use Restrictions as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by this provision and that the Use Restrictions may change from time to time. All purchasers of Lots are on notice that changes may have been adopted by the Association, and purchasers should obtain copies of the current Use Restrictions from the Association.

10.5. Rights of Owners. No Use Restriction shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment).

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly; provided, the Use Restrictions may vary by Neighborhood.

(b) Signs. No Use Restriction shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) Religious and Holiday Displays. The rights of Owners to display religious and

holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions.

(d) Household Composition. No Use Restriction shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(e) Activities Within Dwellings. No Use Restriction shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit illegal and/or illicit activities and activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. No Use Restriction shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No Use Restriction shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided the Association or the Board may require a minimum lease term of up to six (6) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(h) Reasonable Rights to Develop. No Use Restriction or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties,

The limitations in this Section 10.5 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 14.2.

**ARTICLE XI  
EASEMENTS**

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment) and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or

settling or shifting of the improvements constructed reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to Declarant, so long as Declarant owns any of the Properties or the Annexable Property, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable, voice, data or video systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; drainage systems; street lights and signage; and all utilities, including; but not limited to water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Properties.

Declarant specifically grants to the local utility supplier (including water, electric, natural gas, telephone, cable and fiber optic) easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to Declarant so long as Declarant owns any of the Properties or the Annexable Property, the nonexclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant, in connection with the orderly development of any of the Properties.

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant

11.3. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees mortgagees, and the owner of the undeveloped Annexable Property, an easement over the Common Area for the purposes of enjoyment, use access, and development of the Annexable Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its

successors or assigns shall be responsible for any damage caused to the Common Area as a result of construction vehicular traffic or other vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.4. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents. Such right may be exercised by any member of the Board, the Association's officers, agents, employees, and managers, the members of the Architectural Control Committee pursuant to Article IX, and all police, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

**ARTICLE XII  
DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Real Estate Records, or in the case of foreclosure or deed in lieu of foreclosure of a security interest granted by Declarant, tax sale, judicial sale, or sale under the Bankruptcy Code. The person acquiring title to such property may succeed to any or all of Declarant's rights contained in the Governing Documents as are set forth in the written instrument evidencing the conveyance and recorded in the Real Estate Records.

Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Common Area such facilities and activities, in the sole opinion of Declarant may be reasonably required, convenient, incidental to the construction or sale of Lots, including, but not limited to, business offices, signs; model Lots, and sales offices, Declarant and authorized Builders shall have easements for access to and use of such facilities.

Declarant and its employees; agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions and restrictions, or



declaration of condominium or similar instruments affecting any portion of the Properties. without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the Real Estate Records.

Notwithstanding any contrary provision of this Declaration no amendment to or modification of any Use Restrictions or Design Guidelines and Architectural Control Committee Rules made after the Declarant Control Period shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Properties or Annexable Property primarily for development and sale.

This Article may not be amended without the written consent of Declarant. The rights contained in this Article shall terminate upon the earlier of (a) Declarant no longer owning any of the Properties or the Annexable Property; or (b) upon recording by Declarant of a written statement that it has assigned or transferred its Declarant rights.

No amendment to this Declaration that would limit, prohibit or eliminate the exercise of a development right shall be effective without the concurrence of Declarant.

### **ARTICLE XIII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

13.1. Agreement to Avoid Litigation. Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration; any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims grievances or disputes described in Sections 13.2 ("Claims") shall be resolved using the procedures set forth in Section 13.3 in a good faith effort to resolve such claims.

13.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 13.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.3:

- (a) any suit by the Association or Declarant against any Bound Party to enforce the provisions of Article VIII (Assessments);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restrictions);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any claim that the Committee has improperly approved plans for construction of improvements pursuant to Article IX hereof;

(e) any suit in which any indispensable party is not a Bound Party; and

(f) any suit which otherwise would be barred by any applicable statute of limitations,

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.3.

### 13.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) (collectively, the (“Parties”)) shall notify each Respondent in writing (the (“Notice”), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e. the specific authority upon which the Claim arises);
3. Claimant’s proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

### (b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Los Lunas area.

3. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided; nothing herein shall release or discharge

Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and executed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“Termination of Mediation”). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit on the claim.

13.4. Allocation of Costs of Resolving Claims. Each Party shall bear its own costs of mediation, including any attorneys’ fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding (“Post Mediation Costs”).

13.5. Enforcement of Resolution. After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit to enforce such agreement. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the noncomplying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys’ fees and court costs.

#### **ARTICLE XIV GENERAL PROVISIONS**

14.1. Duration.

(a) Unless terminated as provided in Section 14.1(b), this Declaration shall have perpetual duration. If New Mexico law hereafter limits the period during which covenants may run with the land then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of former United States President George Bush.

(b) Unless otherwise provided by New Mexico law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Owners and Declarant. Thereafter, upon the expiration of the Declarant Control Period, it may be terminated only by an instrument signed by Owners of seventy-five percent (75%) of the total Lots within the Properties and by Declarant, if Declarant owns any portion of the Properties or Annexable Property primarily for development and sale, which instrument is recorded in the Real Estate Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Lot to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute rule, regulation or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender; purchaser; insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase insure or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended, following the expiration of the Declarant Control Period, only by the affirmative vote or written consent, or any combination thereof of Voting Members representing seventy-five percent (75%) of the total Member votes in the Association, and the consent of Declarant, so long as Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1. In addition, the approval requirements set forth in Article XII shall be met, if applicable.

Notwithstanding the above the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of the Declarant, (or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Real Estate Records, unless a later effective date is specified in the amendment. Any procedural challenge by an Owner to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Litigation. Except as provided below, no judicial shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Voting Members. A Voting Member representing Lots owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding seventy-five percent (75%) of the total votes attributable to Lots in the Neighborhood represented by the Voting Member. This Section shall not apply, however to (a) actions brought by the Association to enforce the provisions of this Declaration (including without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.5. Cumulative Effect Conflict. The provisions of this Declaration shall be cumulative with any additional covenants applicable to any Neighborhood. In the event of a conflict between or among this Declaration and such covenants, the Governing Documents shall prevail. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.6. Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Lot Owner(s) to recover sums due, for damages or injunctive relief or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.7. No Duty to Enforce. The Declarant shall have no duty or obligation to enforce this Declaration.

15.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and, severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations accruing until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.9. Notice to Declarant. Any notice or other document for Declarant permitted or required by this Declaration to be delivered may be delivered either personally, by certified mail, postage prepaid, or recognized overnight courier.

Sivage Community Development, LLC  
RE: Fiesta II Subdivision  
4902 Alameda Blvd. NE  
Albuquerque, NM 87113

Declarant's address may be changed from time to time by recording a change of address in the Real Estate Records.

IN WITNESS WHEREOF the undersigned have executed this Declaration effective the date and year first written above.

**SIVAGE COMMUNITY DEVELOPMENT, LLC,  
a New Mexico limited liability company**

By: \_\_\_\_\_  
John Hardin, CAO and Treasurer

STATE OF NEW MEXICO . )  
 )ss.  
COUNTY OF BERNALILLO - )

The instrument was acknowledged before me on \_\_\_\_\_ by John Hardin as CAO and treasurer of Sivage Community Development, LLC, a New Mexico limited liability company on behalf of said company.

My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC

**Exhibit A**  
**Legal Description of Initial Property**

DRAFT

**Exhibit B**  
**Legal Description of Annexable Property**

DRAFT



**Exhibit C**  
**Legal Description of initial Common Area**

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