

**BYLAWS  
OF  
VALVERDE ASSOCIATION, INC.**

January 25, 2010

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**BYLAWS  
OF  
VALVERDE ASSOCIATION, INC.**

**Article 1  
General Provisions**

1.1 **Applicability.** These Bylaws provide for governance of the Valverde Commons Subdivision, a subdivision located in Taos County, New Mexico and further described in the Governing Documents described below.

1.2 **Definitions.** Capitalized terms not defined or which definitions are not supplemented below shall have the meanings specified for these terms in the Declaration.

1.2.1 **Allocated Share:** the share allocated to each Owner for liability for Common Expenses as provided in the Declaration.

1.2.2 **Annual Assessment:** the total annual assessment so designated by the Board as provided in Article 8 for anticipated Common Expenses and Reserves Assessment.

1.2.3 **Assessment:** all sums assessed and fines imposed by the Association, for the share of Common Expenses and Special Expenses or any other charge authorized by this Declaration or the Bylaws or for violations of the Declaration of Covenants for Valverde Commons Association (Declaration), these Bylaws, Subdivision Rules or Development Review Committee (DRC) Rules, and chargeable to any Owner.

1.2.4 **Articles of Incorporation:** the articles of incorporation of the Association filed with the New Mexico Public Regulation Commission, as amended.

1.2.5 **Association:** the Valverde Association, Inc., a New Mexico nonprofit corporation.

1.2.6 **Board:** the Board of Directors of the Association.

1.2.7 **Builder:** any Person engaged by an Owner to construct any Improvement within a Lot or an Owner constructing an Improvement within a Lot; a builder and an Owner may be the same Person.

1.2.8 **Building Envelope:** the areas limiting where construction or any modification to natural features on any Lot may occur and designated on the Subdivision Plat, provided, however, the DRC may enlarge or modify the building envelope as provided in §8.8.

1.2.9 **Bylaws:** these bylaws of the Association, as amended.

1.2.10 **Common Barn:** a facility available for use by all Occupants, Owner's guests and invitees for storage of tools, equipment and materials used in maintenance of Common Buildings, Common Property and Sunset Park (shown on the Subdivision Plat), for storage of

recycling materials, and for such other purposes as the Association may elect or are further described in §3.2 of the Declaration and these Bylaws.

1.2.11 **Common Buildings:** the Common House and Common Barn further described in §3.2 of the Declaration and these Bylaws.

1.2.12 **Common Buildings Expenses:** the Common Expenses attributable to the Common Buildings and Common Furnishings.

1.2.13 **Common Expenses:** the amount necessary to pay the cost of maintenance, management, operation, repair and replacement of Common Property and any additional costs declared to be Common Expenses by the Declaration, the Bylaws or a resolution of the Board and Reserves Assessments.

1.2.14 **Common Expense Fund:** the fund created by the Board pursuant to Article 13 of the Declaration.

1.2.15 **Common Expense Liability:** each Owner's share of liability for payment of Common Expenses based each Owner's Allocated Share as provided in the Declaration.

1.2.16 **Common Furnishings:** the furniture, appliances, supplies, equipment, tools and any other personal property located within the Common Buildings, other portions of the Common Property, conveyed by the Declarant to the Association, or from time to time owned or leased by the Association and held for use in common by the Owners.

1.2.17 **Common House:** a common building available for use by all Occupants, Owner's guests and invitees for communal eating, meetings and activities and further described in §3.2 of the Declaration and these Bylaws.

1.2.18 **Common Property:** all interest in real property and personal property identified as "Common Property" in the Declaration and any other real or personal property acquired by the Association.

1.2.19 **Construction Area Plan:** the plan described in §11.5 of the Declaration.

1.2.20 **Construction Completion Deadline:** the period of fifteen (15) months after commencement of construction and ending as of the date of issuance of a certificate of occupancy and completion of the final stucco color coat, paint, and trim, except the DRC, upon good cause shown, may extend the Construction Deadline Period due to weather conditions or other circumstances.

1.2.21 **Construction Deposit:** the deposit required from Lot Owners under §10.6 of the Declaration.

1.2.22 **Covenants Committee:** the committee that may be established by the Board and is described in Article 5 of these Bylaws.

1.2.23 **Declarant:** Valverde Commons, LLC, a New Mexico limited liability company, its successors and assigns.



1.2.24 **Declarant Control Period:** the period of time during which Declarant retains the rights of a Class B Member and the power to appoint members of the Board and DRC and other rights described in §2.4

1.2.25 **Declaration:** the Declaration of Covenants, Conditions and Restrictions for Valverde Commons Subdivision, as amended or supplemented.

1.2.26 **Design Review Committee or DRC:** the committee created pursuant to Article 10 of the Declaration and Article 4 of these Bylaws.

1.2.27 **Design Review Committee Rules or DRC Rules:** such rules and regulations as are adopted by or for the DRC.

1.2.28 **Design Review Fee:** the fee paid to the Association in connection with review of a Development Plan as provided in §10.6 of the Declaration.

1.2.29 **Designee:** the Qualified Person designated by an Entity that is an Owner or Mortgagee and named in a certificate executed by the Entity or Mortgagee and filed with the Secretary. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. In the case of an Owner, the Qualified Person must hold a beneficial interest in the Owner.

1.2.30 **Development Plan:** the plan for development of a Lot which is required to be submitted to the DRC pursuant to Article 10 of the Declaration.

1.2.31 **Director:** any person who is or was a member of the Board of Directors and a “director” as defined in the New Mexico Nonprofit Corporation Act, NMSA 1978, §53-8-26, as amended.

1.2.32 **Easements:** all real property designated on the Subdivision Plat as either roadways, open space, trails, conservation easements, drainage easements, archaeological and utility easements, and any other easement included as part of the Common Property of the Association.

1.2.33 **Entity:** a trust, corporation, limited liability company, partnership or other entity.

1.2.34 **Governing Documents:** the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations and DRC Rules.

1.2.35 **Improvements:** the Residences, buildings, garages, carports, satellite dishes, solar collectors, HVAC units, flagpoles, basketball hoops and backboards, streets, roads, driveways, parking areas, walls, fences, hedges, planted trees and shrubs capable of growing to twelve feet or more in height, lighting and all Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across, or from the land.

1.2.36 **Initial Capital Payment:** the payment to be collected by Declarant on behalf of the Association and described in §13.3.2 of the Declaration.

1.2.37 **Landscaping Committee:** the committee that may be established by the Board and is described in Article 5 of these Bylaws.

1.2.38 **Lot:** the Lots shown on the Subdivision Plat.

1.2.39 **Manager:** the person (if any) with whom the Board contracts for management services as described in §3.7.

1.2.40 **Member:** all those Owners who are members of the Association as provided in the Declaration. The Declarant is a Member so long as the Declarant owns any Lot.

1.2.41 **Mortgagee:** the institutional holder of a first Security Interest in a Lot which has notified the Association, in writing, of its name and address, and that it holds a first Security Interest in a Lot.

1.2.42 **Occupant:** any member of an Owner's family or an Owner's guests, invitees, servants, tenants, employees, or licensees or any other persons who occupy a Residence

1.2.43 **Orientation Committee:** the committee that may be established by the Board and is described in Article 5 of these Bylaws.

1.2.44 **Owner or Owners:** the record owner, whether one or more Persons, associations, or entities, of legal, equitable, or beneficial title of or to any Lot. Owner shall include purchaser of a Lot under a recorded executory contract for sale of real property commonly referred to as a "real estate contract". The foregoing does not include Persons or entities who hold a Security Interest in any Lot.

1.2.45 **Permanent Occupant:** any Occupant who considers the Residence to be his or her legal residence and actually resides in the Residence for at least six months during every calendar year or such shorter period as the Residence is actually occupied by any person. Each Residence must have at least one Permanent Occupant over fifty-five (55) years of age, unless otherwise permitted under Article 6 of the Declaration .

1.2.46 **Person:** a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.

1.2.47 **Plat or Subdivision Plat:** plat of survey titled: *Valverde Commons Subdivision*. . . filed for record on \_\_\_\_\_, 2010 in Cabinet \_\_\_\_ at pages \_\_\_\_ through \_\_\_\_\_, records of Taos County, New Mexico, as amended.

1.2.48 **Primary Viewshed:** unless expressly modified by the DRC as below, the Primary Viewshed of any Lot is the view to Taos Mountain, also known as Pueblo Peak, measured from five (5) feet above natural ground level at the midpoint of the anticipated site of the Residence on any Lot. For Lots whose view of Taos Mountain, the DRC determines, is substantially impaired, the DRC may recognize another view as that Lot's primary viewshed.

1.2.49 **Property:** the Lots and Common Property shown identified on the Subdivision Plat.

1.2.50 **Qualified Occupant:** an individual who occupies the Residence and is at least fifty-five (55) years of age or older.

1.2.51 **Qualified Person:** any Owner or Mortgagee, or if a Lot is owned by an Entity or in case

of a Mortgagee that is an Entity, a Qualified Person shall mean the Designee of an Owner or Mortgagee, provided the Owner or Mortgagee is not in default in payment of Annual Assessments or the Governing Documents.

1.2.52 **Reserves Assessment:** an amount necessary to make capital improvements to or otherwise replace the Common Property.

1.2.53 **Residence:** a home constructed on a Lot.

1.2.54 **Residential Use:** the occupation or use as Residence or dwelling unit within a Structure built on a Lot and occupied by a Person or Persons, a family or family-sized unit, or Occupant in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county, or municipal laws, rules, regulations, codes, or ordinances. "Residential Use" does not preclude the use for a home occupation in compliance with the terms of this Declaration and the Town Development Code.

1.2.55 **Rules and Regulations or Subdivision Rules:** rules and regulations adopted by the Board and approved by the Members (if such approval is required), as amended.

1.2.56 **Security Interest:** an interest in real property created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.

1.2.57 **Special Expenses:** the special allocations and expenses charged against an Owner as provided in §13.6 of the Declaration.

1.2.58 **Structure:** anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground or connected thereto, but not including vegetation, trees, shrubs or plantings, except for trees and shrubs which may grow to a height of twelve feet (12') or more.

1.2.59 **Subdivision:** Valverde Commons Subdivision as shown on the Plat.

1.2.60 **Town Development Code:** Town of Taos Land Use Development Code, as amended.

1.2.61 **Transfer Fee:** the fee charged to a purchaser of a Lot from an Owner as described in §13.12 of the Declaration.

1.3 **Office.** The office of the Subdivision, the Association, and the Board of Directors shall be located at such place as may be designated from time to time by the Board of Directors. The books, records, documents and communications of the Association shall be maintained at such office or at such other place as directed by the Board.

## **Article 2 The Association**

2.1 **Role and Composition.** The Association is a New Mexico nonprofit corporation and shall have

the responsibility of administering the Subdivision, establishing the means and methods of collecting assessments and charges, arranging for the management of the Subdivision and performing all of the other acts that may be required or permitted to be performed by the Association by the Declaration and the Bylaws. Except as specified below and except as to amendments to the Declaration, the election of the Board of Directors or determinations as to the qualifications, powers, duties and terms of office of the Board, other than filling vacancies in its membership for the unexpired portion of any term, and other matters which the Nonprofit Corporation Act specifically requires to be performed by the vote of the members of the Association, the foregoing responsibilities shall be performed by the Board of Directors or Manager as more particularly set forth in Article 3 of these Bylaws.

**2.2 Membership.** Ownership of a Lot is required in order to qualify for membership in the Association. Any person, on becoming an Owner of a Lot, shall automatically become a member of this Association and be subject to these Bylaws. Such membership shall terminate without any formal Association action whenever such person ceases to own a Lot but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in the Association, or impair any rights or remedies which any other Owner has, either through the Board of Directors of the Association or directly, against such former Owner and member that arises out of or is in any way connected with ownership and membership and the covenants and obligations related thereto.

**2.3 Classes of Membership.** There shall be two (2) classes of membership: Class A and Class B. The Class A Members shall be all Owners of Lots, excluding the Declarant. ( Members of the Declarant who own Lots individually shall be Class A members in their capacity as individual Owners of Lots. This does not disqualify their entity Valverde Commons LLC from also being a Member or from voting or otherwise exercising any rights as a Member.) The sole Class B Member shall be the Declarant who shall be a Class B member so long as the Declarant owns any Lots.

**2.4 Class B Membership; Declarant Control Period.** During the Declarant Control Period, the Class B Member shall have the right to appoint the number of Directors of the Board representing the majority vote of the Board. The remaining members of the Board shall be elected by the Class A Members. After the termination of the Declarant Control, the Class B Member shall have the right to vote for members of the Board but shall not have the right to appoint any Board members.

**2.5 Termination of Declarant Control Period.** The Declarant Control Period shall each cease as provided in the Declaration.

**2.6 Successor Organization.** In the event that the Association, as a corporate entity, loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all rights and obligations of the Association hereunder until a qualified nonprofit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

**2.7 Title to Lots.** Title to a Lot may be taken in the name of one or more persons, in any manner permitted by law. The Association may acquire, hold and transfer full legal title to one or more Lots in

the Subdivision in its own name.

2.8 **Annual Meetings.** A meeting of the members of the Association shall be held once a year in the month of December. At such annual meetings, the Members shall elect a Director for each vacancy. The Directors shall be elected by ballot of the Owners in accordance with the requirements of Article 3. At each annual meeting the budget shall be reviewed by the Owners in accordance with Article 8.

2.9 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Owners as may be designated by the Board of Directors.

2.10 **Special Meetings.** The President shall call a special meeting of the Association if so directed by a majority of the Directors or upon a petition signed and presented to the Secretary by Owners of not less than twenty percent (20%) of the votes in the Association. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.11 **Notice of Meetings.** Unless otherwise waived, the Secretary shall provide notice to each Owner of each meeting of the Association at least fourteen (14) but not more than thirty (30) days prior to such meeting, stating the time and place of the meeting and the items on the agenda, including approval of a budget, the general nature of any proposed amendment to the Declaration or Bylaws, and any proposal to remove a Director. Any notice provided pursuant to §12.1 of Article 12 shall be considered service of notice.

2.12 **Adjournment of Meetings.** Other than a meeting convened for approval of any proposed budget, if at any meeting of the Association a quorum is not present, the Board of Directors may adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting was called.

2.13 **Conduct of Business; Decisions.** The order of business of all meetings of the Association shall be as determined by the Board of Directors. Unless otherwise provided in these Bylaws or the Declaration, decisions of the members of the Association shall be made by Consent of a Majority of Owners.

2.14 **Voting.**

2.14.1 Class A Members shall have one (1) equal vote for each Lot in which the Member holds an interest required for membership, however, there shall be only one (1) vote per Lot or any lot described in any Supplemental Declaration. The Class B Member shall have two (2) votes per Lot owned by the Class B Member. Each vote cast by ballot shall remain confidential.

2.14.2 If a Lot is owned by more than one person, the person who shall be entitled to cast the vote of such Lot shall be the person named in a certificate executed by all of the Owners of such Lot and filed with the Secretary. Such certificate shall be valid until revoked by a subsequent certificate similarly executed.

2.14.3 In the absence of such certificate, and if only one (1) of the multiple Owners of a Lot is present, the person present is entitled to cast the vote allocated to that Lot. If multiple Owners are

present, the vote allocated to that Lot shall be cast only in accordance with the agreement of a majority of the multiple Owners. There is a majority agreement if any one (1) of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. Failing to agree, the Lot's vote shall be suspended if more than one (1) person attempts to exercise the vote allocated to the Lot.

2.14.4 No Owner may vote at any meeting of the Association if the Owner is not current in payment of all charges and assessments against the Owner's Lot, that is, no charge or assessment (including interest) has remained unpaid more than sixty (60) days from the date payment is due.

2.14.5 No votes allocated to a Lot owned by the Association may be cast.

**2.15 Proxies.**

2.15.1 A vote may be cast in person or by proxy, and in the case of elections, as provided in §3.2.1.

2.15.2 A proxy may be granted by any Owner in favor of another Owner or a Mortgagee but not in favor of any other person. No Owner or Mortgagee may hold or exercise more than one proxy for one other Owner. Proxies shall be duly executed in writing, shall be valid only for the particular meeting or meetings designated therein and must be filed with the office of the Association before the appointed time of the meeting.

2.15.3 A proxy may be specific, that is, direct a specific vote on the matter at issue or for a specific candidate or candidates for the Board of Directors, or direct the proxy holder to vote as the holder deems appropriate. All proxies and votes cast by a proxy holder shall remain confidential.

2.15.4 A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term. A Owner may not revoke a proxy except by actual notice of revocation to the person presiding over a meeting of the Association.

2.16 **Quorum.** A quorum is present throughout any meeting of the Association if Members entitled to cast twenty-five percent (25%) of the votes, are present in person or by proxy at the beginning of the meeting.

2.17 **Conduct of Meetings.** The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration or these Bylaws. Failure to follow Robert's Rules of Order shall not invalidate any action taken. The President may appoint a person to serve as parliamentarian and persons to tally certain votes.

**Article 3  
Board of Directors**

**3.1 Number of Members; Eligibility; Terms of Office.**

3.1.1 During the Declarant Control Period, the number of Directors of the Board shall be five (5). The Declarant, during the Declarant Control Period, may increase the number of Directors of the Board to seven (7), or, if Declarant finds there is insufficient interest in serving on the Board, may decrease the number of Directors to three (3). The members of the Board during the Declarant Control Period need not be members of the Association.

3.1.2 After expiration of the Declarant Control Period, by Consent of a Majority of Owners, the number of Directors may be increased or decreased, provided however, the number of Directors shall not be less than three (3). After expiration of the Declarant Control Period, the members of the Board of Directors shall be composed of Qualified Persons.

3.1.3 Where a Lot is owned by more than one (1) person, then only one (1) of the Owners may serve as a Director at the same time. If a Lot is owned by an Entity, only one (1) Designee of the Entity may serve as a Director at the same time. If a couple owns a Lot and one of them is also a member of the Entity which owns another Lot, each of them may serve as a Director.

3.1.4 During the Declarant Control Period, the terms of office for each Director shall be established by the Declarant. After expiration of the Declarant Control Period, and after expiration of the initial terms of the elected Directors as provided in §3.1.5, the term of office for each Director shall be three (3) years. By Consent of a Majority of Owners, the term of office for the Directors may be increased or decreased. All Directors may be elected to serve any number of consecutive or non-consecutive terms.

3.1.5 After expiration of the Declarant Control Period, the number of Directors shall be five (5) and the terms of candidates elected to the vacancies on the Board shall be as follows: the two (2) candidates receiving the highest number of votes shall be elected to three (3) year terms, the two (2) candidates receiving the next highest number of votes shall be elected to two (2) year terms and the remaining candidate elected shall be elected to a one (1) year term. In the event a majority of the terms of the Directors expire at the same time in future years, the Board shall adjust the terms of the Directors to provide continuity of the membership of the Board and obtain the Consent of a Majority of the Owners to such adjustment in terms, before or at the meeting called for the purpose of electing members of the Board.

3.1.6 The members of the Board of Directors shall hold office until their respective successors have been elected by the members of the Association or in case of a vacancy, by the Board as provided in §3.10.

### **3.2 Elections; Before and After Expiration of Declarant Control Period.**

3.2.1 Before expiration of the Declarant Control Period a only that Director (s) who is to be elected by the Class A Owners must be a Qualified Person. After expiration of the Declarant Control Period, all Directors shall be Qualified Persons and elected by the Owners. Pursuant to the Nonprofit Act, §53-8-15(B), and if the Nominating Committee has nominated at least one (1) person for each vacancy as provided in §3.3 below, the election of Directors may be conducted either by mail or at a meeting called for this purpose. Any vote cast by mail shall be duly executed in writing, shall be valid only for the particular election. In order to be effective, a vote cast by mail must be filed with the office of the

Association before the deadline for receipt of ballots established by the Board.

3.2.2 Each Owner shall be entitled to one (1) vote for each vacancy to be filled on a non-cumulative basis. For example, if three (3) vacancies exist, each Owner shall be entitled to vote for three (3) candidates but cannot cast all three (3) votes for one (1) candidate. All members shall be elected by a plurality vote with the persons receiving the highest number of votes being elected. The successful candidate between candidates receiving the same number of votes shall be determined by lot or a coin toss.

3.2.3 Each candidate shall present that person's qualifications to those Owners present at the meeting called for the purpose of electing Directors or by a mailing conducted by the Association. Candidates shall have the right to observe the counting of the ballots. At the option of the person presiding at the meeting called for the purpose of electing Directors, at which a quorum is present at the beginning of the meeting, the meeting may be recessed for the purpose of permitting the Owners to cast votes for such election and for tabulation of the ballots.

3.3 **Nominating Committee; Nomination Procedure.** After expiration of the Declarant Control Period, Qualified Persons may be nominated for election as Directors by a Nominating Committee appointed by the Board. The Nominating Committee shall consist of a chairman, who shall be a Director, and two (2) or more Owners, one of whom may not be a member of the Board and one who may or may not be a member of the Board. The Nominating Committee shall be appointed by the Board of Directors not later than sixty (60) days before each annual meeting of the Owners to serve a term expiring at the next annual meeting or until their successors are appointed whichever first occurs. The Nominating Committee shall solicit prospective candidates. All prospective nominees who are Qualified Persons shall be nominated by the Nominating Committee. If the Nominating Committee is not able to nominate at least one (1) person for each vacancy, the election shall be held at a meeting called for this purpose and the person presiding at the meeting of the Owners shall request nominations of Qualified Persons from the floor.

3.4 **Election of Chairman and Officers.** Following each election, the Board shall meet and elect a Chairman of the Board and officers as provided in §7.2. The office of Chairman and President shall be held by the same person.

3.5 **Powers and Duties; Generally.** Except where such powers and duties are to be exercised by the Owners pursuant to the Declaration, or by these Bylaws, the Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the benefit of the Owners; provided, however, that such Rules and Regulations shall not be in conflict with the Declaration or these Bylaws and provided further that such Rules and regulations shall be presented to the Owners. Not less than fourteen (14) nor more than thirty (30) days before the meeting at which the proposed Rules and Regulations are to be considered, the Board of Directors shall cause a copy of the proposed Rules and Regulations and notice of the meeting to be mailed to the Owners or to be provided to the Owners by such other means as is authorized hereunder. The proposed Rules and Regulations shall be deemed approved unless rejected by a Consent of a Majority of the Owners at the meeting at which the proposed Rules and Regulations are presented to the Owners.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may



hereafter be adopted, the Board of Directors shall on behalf of the Association :

3.5.1 Make assessments against Owners to pay the Common Expenses and to fund the Common Expense Fund, establish the means and methods of collecting such assessments from the Owners; and establish the period of the installment payment of the Annual Assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the Annual Assessment against each Owner for that Owner's proportionate share of the Common Expenses shall be payable not less often than annually and at such time or times as designated by the Board of Directors.

3.5.2 Open bank or investment accounts, purchase investments and designate the signatories thereon on behalf of the Association.

3.5.3 Make and amend the Rules and Regulations.

3.5.4 Notify any Mortgagee of any default hereunder by the Owner subject to such mortgage, in the event such default continues for a period exceeding sixty (60) days, provided, however, failure to timely provide such notice shall not affect the Association's rights under the governing documents.

3.5.5 Borrow money on behalf of the Association (including money secured by an assignment of future income) when required for the operation, care, upkeep and maintenance of the Common Property, provided, however, that the Consent of a Majority of Owners obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required to borrow any sum in excess of twenty (20%) of the current annual budget. If any sum borrowed by the Board of Directors pursuant to the authority contained in this §3.5.5 is not repaid by the Association, an Owner, who pays to the creditor such proportion thereof as the Owner's Common Expense Liability bears to the total Common Expense Liability in the Subdivision, shall be entitled to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such Owner's Lot.

3.5.6 Acquire, hold and dispose of Lots, and incur debt, secured by mortgages, if such expenditures and hypothecations are included in the budget adopted by the Association.

3.6 **Additional Duties.** The Board of Directors shall have the additional duties listed below but may delegate to one (1) or more of its members, or other person or entity the authority to act on behalf of the Board of Directors, as to any of the duties listed in this §3.6, as the Board of Directors deems appropriate:

3.6.1 Prepare an annual budget, in which there shall be established the Annual Assessment of each Owner for the Common Expenses pursuant to the provisions of the Declaration and these Bylaws.

3.6.2 Establish the amount of the Transfer Fee if other than the Transfer Fee provided in the Declaration §13.12.

3.6.3 Collect the Initial Capital Payments and Transfer Fees on behalf of the Association and all assessments from the Owners, deposit the proceeds thereof in bank or investment accounts designated by the Board of Directors and use the proceeds to carry out the administration of the Association.

3.6.4 Provide for the operation, care, upkeep and maintenance the Common Property.

3.6.5 Make, or contract for the making of, repairs, additions and improvements or alterations of the Common Property, and repairs to and restoration of the Common Property, in accordance with the Declaration and these Bylaws.

3.6.6 Obtain and carry insurance against casualties and liabilities, as provided in Article 9 of these Bylaws, pay the premiums therefor and adjust and settle any claims thereunder.

3.6.7 Enforce by legal means the provisions of the Governing Documents.

3.6.8 Pay the cost of all authorized services rendered to the Association and not billed to Owners of individual Lots or otherwise provided for in the Declaration or these Bylaws.

3.6.9 Keep (or cause to be kept) books with detailed accounts in chronological order of the receipts and expenditures affecting the Common Property, and the administration of the Subdivision, specifying the expenses of maintenance and repair of the Common Property and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, in compliance with the policies set by the Board of Directors. All books and records shall be kept in accordance with accepted accounting principles consistently applied.

3.6.10 Do such other things and acts not inconsistent with the Governing Documents.

3.7 **Manager.** The Board of Directors may employ a Manager at a compensation established by the Board of Directors.

3.8 **Duties of Manager; Standards.**

3.8.1 The Manager shall perform such duties and services as the Board of Directors shall authorize relating to management of the Subdivision.

3.8.2 The Board shall impose appropriate standards of performance upon the Manager. Unless the Manager is instructed otherwise by the Board:

3.8.2.1 no remuneration shall be accepted by the Manager from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

3.8.2.2 any financial interest or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

3.8.2.3 reports shall be prepared for the Association as directed by the Board.

3.9 **Removal or Resignation of Members of the Board of Directors.** Except for members appointed by the Declarant during the Declarant Control Period, at any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed with or without cause by a two-thirds (2/3) vote of all Owners present, in person or by proxy, and entitled to vote at any meeting of Owners at which a quorum is present. Any Director whose removal has been

proposed by the Owners shall be given at least seven (7) days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Board of Directors may resign at any time. A Director shall be deemed to have resigned upon disposition of the Director's interest in all Lots owned by the Director.

3.10 **Vacancies.** Except for a vacancy during the Declarant Control Period which shall be filled by the Declarant, any vacancy occurring in the Board after expiration of the Declarant Control Period shall be filled by the affirmative vote of a majority of the remaining Directors, even though less than a quorum of the Board of Directors may exist. Any person so elected shall hold office for a term equal to the unexpired term of the Director succeeded.

3.11 **Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Such meetings shall be held at least once annually during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, by mail, via facsimile, or if agreed to by the Director, by e-mail message, at least five (5) business days prior to the day named for such meeting.

3.12 **Special Meetings.** Special meetings of the Board of Directors may be called by the President on three (3) business days notice to each Director, given by mail, via facsimile, or, if agreed to by the Director, by e-mail message, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on the written request of at least one (1) Director.

3.13 **Waiver of Notice.** Any Director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall constitute a waiver of notice by the Director of the time, place and purpose of such meeting. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

3.14 **Quorum of Board of Directors.** A quorum is deemed present throughout any meeting of the Board of Directors if persons entitled to cast a majority of the votes are present at the beginning of the meeting. The affirmative vote of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.15 **Compensation.** No Director shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association.

3.16 **Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Declaration and these Bylaws. Failure to follow Robert's Rules of Order shall not invalidate any action taken.

3.17 **Action Without Meeting; Statement of Unanimous Consent.** Any action by the Board of

Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

### **3.18 Liability of Directors, Officers, Owners and Association.**

3.18.1 To the fullest extent authorized by the Nonprofit Corporation Act, NMSA 1978, §§53-8-1 *et seq.*, as it now exists and as it may hereafter be amended, no Director or Officer shall be liable to the Association or any Owner for monetary damages for breach of duty of care or other duty as a Director or Officer, or otherwise, except for a Director's own individual willful misconduct or bad faith. Officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Owner arising out of any contract made by the Officers or Board of Directors, or for the damages as a result of injuries arising in connection with the Common Property solely by virtue of the Owner's ownership of a Lot or for liabilities incurred by the Association, shall be limited to the total liability multiplied by the Owner's Common Expense Liability. Every agreement made by the Officers, the Board of Directors or the Manager on behalf of the Association shall, if obtainable, provide that the Officers, the Directors or the Manager, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Owners), and that each Owner's liability thereunder shall be limited to the total liability thereunder multiplied by the Owner's Common Expense Liability.

3.18.2 The Association shall not be liable for any failure of services obtained by the Association for the benefit of Owners or paid for as a Common Expense, or for injury or damage to person or property caused by the action of the Association or taken on behalf of the Association, or by any Owner, or any other person, or resulting from electricity, water, sewer refuse, snow or ice which may leak or flow from any portion of the Common Property onto any Lot or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Property. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Property or from any action taken by the Association to comply with any law, ordinance, or directive of any municipal or other governmental authority.

3.19 **Right to Indemnification.** Subject to the provisions of the Nonprofit Corporation Act, the Association shall indemnify and hold any Director or Officer harmless for the reasonable expenses, costs, attorneys' fees, actually or reasonably incurred by the Director or Officer in connection with the Director's or Officer's involvement in any proceeding by reason of being or having been a Director or Officer. Any Director or Officer shall also be indemnified for those reasonable amounts paid to satisfy a judgment, fine, or penalty or to compromise or settle a claim. The indemnification provided shall be to the fullest extent authorized by the Nonprofit Corporation Act and shall inure to the benefit of the heirs and personal representatives of any Director or Officer.

3.20 **Advance Indemnification.** The Board of Directors of the Association, shall permit indemnification and payment of reasonable expenses to be incurred by a Director or Officer for the defense of any proceeding, provided that the Director or Officer first enters into a written agreement with the Association to reimburse the Association if it is subsequently determined that the Director or Officer

was not entitled to indemnification due to a subsequent adjudication of liability on the basis of willful misconduct or recklessness in the performance of the duties of the office as provided under the Nonprofit Corporation Act, NMSA 1978, §53-8-26.

### 3.21 **Right to Bring Action to Enforce Indemnification.**

3.21.1 If a valid claim is not paid in full by the Association within ninety (90) days after an itemized claim has been received by the Association, the claimant may thereafter, but only during a period not exceeding two (2) years after tendering the itemized claim to the Association, bring an action against the Association to recover on any unpaid amount of the claim. The prevailing party in said action shall be entitled to collect the reasonable attorneys fees from the other party.

3.21.2 In addition to the defense of full accord and satisfaction of any claim, it shall be a defense to any such action that the claimant has not complied with the standards of conduct permitting indemnification under the provisions of the Nonprofit Corporation Act. Any prior determination by the Association (including its Board, independent counsel, or its members) of the eligibility or ineligibility of claimant for indemnification due to the standards of conduct set forth in the Nonprofit Corporation Act shall not be a defense to the action or create any presumption as to the eligibility of claimant for indemnification.

3.22 **Non-Exclusivity.** The right to advance indemnification conferred in this Article 3 shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Association's Articles of Incorporation, Bylaws, or any agreement, or vote of members or disinterested Directors.

3.23 **Insurance.** The Association shall maintain insurance, at its expense, to protect itself and any Director or Officer, or any related corporation, trust or other incorporated or unincorporated enterprise against any such expense, liability or loss, whether or not the Association would have the power to indemnify such person against such expense, liability or loss under the provisions of the Nonprofit Corporation Act.

### 3.24 **Common or Interested Directors.**

3.24.1 Each member of the Board of Directors shall exercise the Director's powers and duties in good faith and with a view to the interests of the Subdivision. No contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association in which any of the Directors of the Association are directors or officers or are pecuniarily or otherwise interested is voidable because any such Director is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because the Director's vote is counted for such purpose, if any of the conditions specified in any of the following exists:

3.24.1.1 the fact of the common directorate or interest is disclosed to the Board of Directors and noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

3.24.1.2 the fact of the common directorate or interest is disclosed or known to at least a majority of the Owners, and the Owners approve or ratify the contract or transaction in good faith by

a vote sufficient for the purpose; or

3.24.1.3 the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

3.24.2 Any common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and if desired by the Board, will refrain from discussion or vote on such contract or transaction.

## **Article 4**

### **Design Review Committee**

#### **4.1 Design Review Committee.**

4.1.1 During the Declarant Control Period, the Members shall elect the members of the Design Review Committee or DRC described in the Declaration. The number of members of the DRC shall initially be three (3) but the number of members may be increased to five (5) at the election of the Declarant. The members of the DRC need not be Members of the Association.

4.1.2 After expiration of the Declarant Control Period, the members of the DRC shall be appointed by the Board of Directors in accordance with the Declaration.

4.1.3 Each such member of the DRC shall serve for a term of two (2) years. At the option of Declarant during the Declarant Control Period, and thereafter at the option of the Board, any member may be appointed to serve any number of consecutive or non-consecutive terms. The Board may remove any member of the DRC from the DRC and shall fill any vacancies by appointment.

4.1.4 Except for professional persons who serve on the DRC in their professional capacity and who may be paid such compensation as the Board may approve, no member of the DRC shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association, except that if the Board elects to appoint a licensed architect or professional engineer as a member of the DRC, the Board may pay such compensation as it deems appropriate and such cost shall be a Common Expense.

4.2 **Quorum of DRC.** A quorum is deemed present throughout any meeting of the DRC if persons entitled to cast a majority of the votes are present at the beginning of the meeting. The affirmative vote of a majority of the DRC present at a meeting at which a quorum is present shall constitute the decision of the DRC. If at any meeting of the DRC there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

#### **4.3 Duties; Powers and Jurisdiction of DRC; Common Expenses.**

4.3.1 The DRC shall have the powers and shall carry out the duties as specified in the Declaration and such other duties as may be required by the Board of Directors. The DRC shall have the

power to issue a cease and desist request to an Owner or Occupant whose actions are inconsistent with the provisions of the Declaration, Bylaws, Rules and Regulations or resolutions of the Board of Directors (upon petition of any Owner or upon its own motion) on matters governed by the Declaration.

4.3.2 The expenses of the DRC shall be paid first from Design Review Fees and forfeited Construction Deposits or any other fees and costs collected pursuant to the Declaration, and if insufficient, such expenses shall be deemed to be a Common Expense included in the Association's budget described in the Declaration and these Bylaws.

#### 4.4 **DRC Rules.**

4.4.1 The DRC, if it so elects, may recommend DRC Rules to the Board governing matters in the DRC's jurisdiction as provided in the Declaration. The DRC Rules shall not be effective unless and until such proposed rule, regulation or procedural requirement is first approved by a majority vote of the Board. The Board may, on its own, adopt rules, regulations and procedures for the DRC. All DRC Rules shall be consistent with, and not contrary to, all provisions of the Declaration and these Bylaws.

4.4.2 DRC Rules shall be effective ten (10) days following the mailing or distribution of the proposal to the Owners at the last address provided by the owners to the Board, unless a later effective date is specified therein. Such mailing or distribution shall be conducted by the Board of Directors following its review of the DRC Rules.

4.5 **Interpretations of DRC Rules.** The DRC shall provide interpretations of the DRC Rules when requested to do so by any Owner. The DRC shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board of Directors. The DRC shall maintain minutes of all meetings held by the DRC and it shall provide copies of such minutes to the Board of Directors.

4.6 **Appeal of DRC Action.** Any action, ruling or decision of the DRC may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party pursuant to the procedures set forth in the Rules and Regulations. The Board of Directors may relieve the DRC of any of its duties, powers and authority either generally or on a case by case basis by an affirmative vote of a majority of the Directors.

### **Article 5**

#### **Committees; Landscaping Committee; Covenants Committee; Orientation Committee**

5.1 **Committees.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution and the chairperson of the committee shall be deemed an *ex-officio* member of the Board for acts and decisions made as a member of such committee.

#### 5.2 **Landscaping Committee.**

5.2.1 The Board may establish a "Landscaping Committee". The Landscaping Committee shall consist of not less than three (3) nor more than five (5) members. All members of the

Landscaping Committee shall be appointed by the Board, and each such member shall serve for a term of two (2) years. At the option of the Board, any member may be appointed to serve any number of consecutive or non-consecutive terms.

5.2.1 No member of the Covenants Committee shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association.

5.2.2 A quorum is deemed present throughout any meeting of the Covenants Committee if persons entitled to cast a majority of the votes are present at the beginning of the meeting. The affirmative vote of a majority of the Covenants Committee present at a meeting at which a quorum is present shall constitute the decision of the Covenants Committee. If at any meeting of the Covenants Committee there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

5.2.3 The Board may delegate to the Committee the preparation of a plan for landscaping and landscaping improvements for the Common Property, in which case the Committee shall present such a plan to the Board. If the Board approves the plan, it may present the plan to the Declarant for its review and approval. If the Declarant approves the plan and it is within the budget which the Declarant has established for the landscaping, the Board may present the plan to the Members who may reject the plan by the Consent of the Majority of Owners. If the plan is not within the budget the Declarant has established for the landscaping, the Board may approve a Special Assessment to cover the amount of the overage and present the same to the Members in the same manner as the annual budget, in which case the Members may vote reject the Special Assessment by a Consent of the Majority of Members. If the plan is not rejected by the Members, it shall be deemed approved and shall be implemented. Either before or after the installation of the landscaping and improvements, the Board may also delegate to the Committee the review and regulation of the installation of plants and irrigation systems in the Common Property and their maintenance. The Landscaping Committee may propose to the Board for inclusion in the Rules and Regulations restrictions and other regulations related to the landscaping and irrigation restrictions set forth in the Declaration. Decisions of the Landscaping Committee are subject to appeal to the Board in the same manner as the decision of the Covenants Committee as provided in §5.3.

5.2.4 No member of the Covenants Committee shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association.

5.2.5 The Board may relieve the Landscaping Committee of any of its duties, powers and authority either generally or on a case-by-case basis by an affirmative vote of a majority of the Directors. The Landscaping Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board.

### 5.3 **Covenants Committee**

5.3.1 The Board may establish a Covenants Committee, consisting of not less than three (3)



nor more than five (5) members. All members of the Covenants Committee shall be appointed by the Board, and each such member shall serve for a term of two (2) years. At the option of the Board, any member may be appointed to serve any number of consecutive or non-consecutive terms.

5.3.2 No member of the Covenants Committee shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association.

5.3.3 A quorum is deemed present throughout any meeting of the Covenants Committee if persons entitled to cast a majority of the votes are present at the beginning of the meeting. The affirmative vote of a majority of the Covenants Committee present at a meeting at which a quorum is present shall constitute the decision of the Covenants Committee. If at any meeting of the Covenants Committee there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

5.3.4 The Covenants Committee shall regulate matters outside the jurisdiction of the DRC and such matters as directed by the Board in the Rules and Regulations or Subdivision Rules of the Board. The Covenants Committee shall have the power to issue a cease and desist request to an Owner or Occupant whose actions are inconsistent with the provisions of the Declaration, Bylaws, Rules and Regulations or resolutions of the Board of Directors (upon petition of any Owner or upon its own motion) and outside the jurisdiction of the DRC.

5.3.5 The Covenants Committee shall provide interpretations of the Rules and Regulations or Subdivision Rules for matters outside the jurisdiction of the DRC and when requested to do so by any Owner and shall have such additional duties, power and authority as the Board of Directors may from time to time provide by resolution or in the Rules and Regulations. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board of Directors. The Covenants Committee shall maintain minutes of all meetings held by the Covenants Committee and it shall provide copies of such minutes to the Board of Directors.

5.3.6 Any action, ruling or decision of the Covenants Committee may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party pursuant to the procedures set forth in the Rules and Regulations. The Board of Directors may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case by case basis by an affirmative vote of a majority of the Directors.

5.3.7 The Board may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case-by-case basis by an affirmative vote of a majority of the Directors. The Landscaping Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board.

#### 5.4 **Orientation Committee**

5.4.1 The Board may establish an Orientation Committee, consisting of not less than

three (3) nor more than five (5) members. All members of the Orientation Committee shall be appointed by the Board, and each such member shall serve for a term of two (2) years. At the option of the Board, any member may be appointed to serve any number of consecutive or non-consecutive terms.

5.4.2 No member of the Orientation Committee shall receive any compensation from the Association for acting as such but may be reimbursed for expenses incurred on behalf of the Association.

5.4.3 A quorum is deemed present throughout any meeting of the Orientation Committee if persons entitled to cast a majority of the votes are present at the beginning of the meeting. The affirmative vote of a majority of the Orientation Committee present at a meeting at which a quorum is present shall constitute the decision of the Orientation Committee. If at any meeting of the Orientation Committee there shall be less than a quorum present, a majority of those present may adjourn the meeting to another time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

5.4.4 The Orientation Committee shall be responsible for meeting with new Members and providing them an orientation into the policies of Valverde Commons Association and its Vision Statement.

5.4.5 The Board may relieve the Orientation Committee of any of its duties, powers and authority either generally or on a case-by-case basis by an affirmative vote of a majority of the Directors. The Landscaping Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board.

5.5 **Additional Committees; Status.** The Board of Directors, by resolution, may designate additional committees each of which, to the extent provided in the resolution, shall have such authority as granted by the Board of Directors. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any Director of any responsibility imposed by law.

## **Article 6 Officers**

6.1 **Designation.** The principal Officers of the Association shall be the President (who shall also be Chairman of the Board as provided in §3.4), one (1) or more Vice-Presidents, and the Secretary and Treasurer. The Board of Directors may appoint an assistant treasurer, an assistant secretary, a recording secretary and such other Officers as in its judgment may be necessary. The President and at least one of the Vice Presidents shall be members of the Board. Any other Officer may, but need not be, a Director.

6.2 **Election of Officers.** The Officers of the Association shall be elected annually by the Board of Directors at an organization meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors and until a successor is chosen. The President and Vice-Presidents that are not reelected to the Board shall serve until a successor is chosen.

6.3 **Removal of Officers.** Upon the affirmative vote of a majority of all Directors, any Officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

6.4 **President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors; and have all of the general powers and duties related to the office of President of the Association.

6.5 **Vice-President.** A Vice-President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor any Vice-President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice-Presidents shall also perform such other duties as shall from time to time be imposed upon them by the Board of Directors or by the President.

6.6 **Secretary.** The Secretary shall preserve the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Owners and Mortgagees hereunder shall be delivered; and, in general, perform all the duties related to the office of Secretary of the Association.

6.7 **Treasurer.** The Treasurer shall have the responsibility for maintaining full and accurate financial records and for the preparation of all required financial data; and, in general, perform all the duties related to the office of Treasurer of the corporation.

6.8 **Execution of Documents; Obligations.** All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of \$10,000.00 of the Common Expenses shall be executed by any two (2) persons designated by the Board of Directors. Any instruments for expenditures or obligations of a lesser amount may be executed by any one (1) person designated by the Board of Directors.

6.9 **Compensation of Officers.** No Officer who is also a Director shall receive any compensation from the Association for acting as such Officer, provided however, that Officers may be reimbursed for expenses incurred on behalf of the Association upon approval of the Board of Directors.

## **Article 7**

### **Operations; Common Expenses and Assessments**

7.1 **Fiscal Year.** The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

7.2 **Preparation of Budget.**

7.2.1 Annually, and consistent with the requirements of the Declaration and this Article 8, the Board of Directors shall adopt a budget for the Association to be reviewed by the Owners. The budget shall contain an estimate of the amount considered necessary to pay the Common Expenses, including, without limitation, the cost of maintenance, management, operation, repair and replacement of the Common Property which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of materials, insurance premiums, and services, supplies, utility charges and other expenses

that may be declared to be Common Expenses by the Governing Documents or by resolution of the Board.

7.2.2 The budget shall also include such reasonable amounts as the Board of Directors considers necessary to fund and maintain reasonable Reserves Assessment for working capital, operations, contingencies and replacements and any special allocations as provided in the Declaration.

### 7.3 **Budget Review by Owners.**

7.3.1 Not less than fourteen (14) nor more than thirty (30) days before the annual meeting scheduled as provided in §2.8, the Board of Directors shall cause to be sent to each Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Owner.

7.3.2 The Board of Directors shall set a date for a meeting of the Owners to consider approval of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the copy of the budget. The budget shall be deemed approved by the Owners unless rejected by a Consent of a Majority of the Owners at the annual meeting at which time the budget is presented to the Owners. Until termination of the Declarant Control Period, the Declarant (the Class B Member who would normally has two votes per Lot) shall have just one vote per Lot on the issue of whether or not to reject the budget. Class A Members will have one vote per Lot on this issue at all times. After termination of the Declarant Control Period, in relation to this budget issue Declarant shall be able to exercise the two votes per Lot to which Declarant is usually entitled as the Class B Member. In the event the proposed budget is rejected, the periodic budget last approved by Consent of a Majority of the Owners shall continue until such time as the Owners approve a subsequent budget proposed by the Board of Directors.

### 7.4 **Authorized Adjustments to Budget Items.**

7.4.1 The Board shall have the authority to adjust expenditures, the amounts, categories and any line item identified in a current budget as it deems appropriate, during the fiscal year, provided that the total assessed amount remains the same as set forth in the budget approved by the Board. Unanticipated expenditures, including capital expenditures, not identified in an approved budget which may become necessary during the year may be charged against general operating reserves.

7.4.2 The Board shall have the authority to adjust expenditures, the amounts, categories and any line item identified in a current budget as Reserves Assessment, as it deems appropriate, during the fiscal year, provided that the total assessed amount remains the same as the total amount for Reserves Assessment as set forth in the budget.

### 7.5 **Assessment; Operations.**

7.5.1 The total Annual Assessment shall be based upon the total of each Owner's Common Expense Liability.

7.5.2 The total amount of the estimated funds set forth in the annual budget shall be assessed against the Owners in accordance with each Lot's Common Expense Liability. The Annual Assessment shall be a lien against each Owner's Lot as provided in the Declaration and Article 9, §9.10 of these Bylaws. On or before the first day of each fiscal year or on such other date as determined by the Board of Directors each Owner shall be obligated to pay the Owner's Annual Assessment, in advance. The

Board may authorize the payment of such Annual Assessment in monthly, quarterly, or semiannual installments.

7.5.3 Following the end of each fiscal year, the Board of Directors shall make available to all Owners a reasonably itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the approved budget for the preceding fiscal year, and showing the net amount over or short of the actual expenditures plus reserves.

7.6 **Surplus Funds.** Any amount accumulated in excess of the amount required for Common Expenses, after establishing adequate general operating reserves and reserves for replacements, shall be applied to future Common Expenses.

7.7 **Net Shortage.** In the event a net shortage occurs during the year due to extraordinary expenditures, capital improvements, nonpayment of assessments or unanticipated loss of income, the Board may elect to borrow funds to address the shortage, may charge such shortage against the general operating reserves or elect to levy an additional assessment against the Owners in accordance with their Common Expense Liability. Such further assessment shall be payable either: (1) in full with payment of the next periodic assessment due; or (2) in not more than six (6) equal monthly installments, as the Board of Directors may determine.

7.8 **Special Assessments.**

7.8.1 Except as provided in the Declaration, in addition to any other authorized assessment, the Association may levy special assessments for funding of special projects or specific unanticipated expenditures first approved by the Board. Such special assessment shall be submitted to the Owners, as provided in §8.3.2, and if not rejected by Consent of a Majority of Owners, such special assessment shall be levied against all Lots, in proportion to each Lot's Common Expense Liability. Until termination of the Declarant Control Period, the Declarant (the Class B Member who would normally have two votes per Lot) shall have just one vote per Lot on the issue of whether or not to reject the special assessment. At all times Class A Members shall have one vote per Lot on the issue of special assessments. After termination of the Declarant Control Period, in relation to this special assessment issue, Declarant shall be able to exercise the two votes per each Lot owned by it to which Declarant is usually entitled as the Class B Member.

7.8.2 Upon review of a special assessment as provided in §7.8.1, the Board of Directors shall serve notice of any such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and time of payment. All Owners shall be obligated to pay the special assessment amount and, if such further assessment is not payable in installments, such assessment shall be a lien as of the effective date set forth in the preceding §8.5 upon approval of the special assessment by the Owners.

7.9 **Effect of Failure to Prepare or Adopt Budget.** The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of any Owner's obligation to pay the Owner's Common Expense Liability whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner shall continue to pay each periodic assessment at the rate established by the last budget approved by the Owners until a new annual or adjusted budget shall have been delivered and approved by the Owners.

7.10 **Accounts.** All sums collected by the Board of Directors with respect to assessments against the

Owners or from any other source may be commingled with other funds, but shall be held for each Owner in accordance with the Owner's Common Expense Liability.

#### **7.11 Payment of Common Expenses.**

7.11.1 Each Owner shall pay the Annual Assessment and any other charges assessed by the Board of Directors pursuant to the provisions of the Declaration or these Bylaws. No Owner may claim an exemption from liability for the Owner's contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Property or by abandonment of part of the Common Property or by contribution of labor or property to the Association (unless the Board has hired the Owner to do work or provide property and the Board has failed to pay the Owner the price agreed to in advance for the labor or property).

7.11.2 Each Mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such Mortgagee comes into possession thereof.

7.12 **Alterations or Improvements; Allocation to Owners.** If, in the opinion of the majority of the Directors, alterations or improvements requested by some but not all Owners are exclusively or primarily for the benefit of the Owner or Owners requesting the same, such requesting Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

7.13 **Disclaimer of Bailee Liability.** The Board of Directors, the Association and any Owner shall not be considered a bailee of any personal property stored on the Common Property (including property located in vehicles parked on the Common Property), whether or not exclusive possession of the particular area is given to a Owner for storage or any other purposes. The Board, the Association and any Owner shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

### **Article 8 Insurance**

#### **8.1 Authority to Purchase; Liability Insurance.**

8.1.1 The Board of Directors shall obtain and maintain comprehensive general liability (including errors and omissions coverage for Directors) in such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Manager and each Owner against any liability to the public or to the Owners (and their invitees, agents and employees) covering all occurrences commonly insured against arising out of, or related to the ownership and/or use of the Common Property. Coverages should be provided on an "entity" basis covering the Association, the Directors, volunteers and employees acting on behalf of the Association.

8.1.2 The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) per occurrence of loss and Two Million (\$2,000,000.00) aggregate covering all claims for bodily injury or property damage liability. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained.

8.2 **Other Insurance.** The Board of Directors shall obtain and maintain:

8.2.1 adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, trustees, employees or agents of the Association and all others who handle, or are responsible for handling, funds of the Association;

8.2.2 statutory workers compensation insurance covering direct employees of the Association, as may be required by law; and

8.2.3 such other insurance as the Board of Directors may determine or as may be requested from time to time by Consent of a Majority of Owners.

8.3 **Unavailability of Insurance.** In the event that the insurance described in this Article 9 is not reasonably available or available at reasonable cost, the Board shall provide such insurance as it deems appropriate and in compliance with the Declaration.

8.4 **Separate Insurance.** Each Owner shall have the right, at the Owner's own expense, to obtain insurance for the Owner's Lot and for the Owner's own benefit provided, however, that no Owner shall be entitled to exercise the Owner's right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by an Owner.

## **Article 9 Compliance and Default**

9.1 **Relief.** Each Owner shall be governed by, and shall comply with, all of the terms of the Governing Documents as any of these documents may be amended from time to time. Any default by an Owner shall entitle the Association, acting through its Board of Directors or through the Manager, to the following relief:

9.2 **Additional Liability.** Each Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by the Owner's act, neglect or carelessness or the act, neglect or carelessness of any member of the Owner's family or the Owner's occupants, employees, agents or licensees. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances.

9.3 **Costs and Attorneys' Fees.** In any proceeding arising out of any alleged default by an Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such attorneys' fees incurred by the Association, in good faith.

9.4 **No Waiver of Rights.** The failure of the Association, the Board of Directors or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the rights of the Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Owner pursuant to any term, provision, covenant or condition of the Governing Documents shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Governing Documents or at law

or in equity.

9.5 **Interest Charges.** In the event of a default by any Owner in paying any sum assessed against the Owner's Lot the Board shall collect the interest charges as provided in the Declaration.

9.6 **Abating and Enjoining Violations by Owners.** The violation of any of the Rules and Regulations adopted by the Board of Directors, the breach of any Bylaw contained herein or the breach of any provision of the Declaration shall give the Board the right, in addition to any other rights set forth in these Bylaws: (1) to enter the Lot in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; or (2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

9.7 **Legal Proceedings.** Failure to comply with any of the terms of the Declaration, these Bylaws and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages and fines, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction. All such relief may be sought by the Association, the Board of Directors, the Manager or, if appropriate, by any aggrieved Owner and shall not constitute an election of remedies.

9.8 **Collection of Assessments.**

9.8.1 The Board of Directors or the Manager, at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof. In the event of a default by any Owner in payment of any installment of the Annual Assessment which default continues for thirty (30) days the Board or Manager shall notify the Owner of the default amount and interest due.

9.8.2 If said default continues for an additional thirty (30) days the Board or the Manager on behalf of the Board may institute legal proceedings to collect such assessment due together with interest, costs of collection and attorneys' fees authorized in the Declaration and this Article 10 and to foreclose the assessment lien against the defaulting Owner's Lot.

9.9 **Fines.** In the case of a default that is not related to payment of assessments, the Covenants Committee and the Board shall have the right to levy a daily fine against an Owner until compliance with the Governing Documents, in an amount, deemed appropriate by the Covenants Committee or Board to compel compliance. Such fine shall be considered part of the Owner's assessment obligation.

9.10 **Lien for Assessments; Fines.**

9.10.1 As provided in the Declaration, all assessments, charges or fines authorized by the Declaration or these Bylaws, the total Annual Assessment of each Owner for Common Expenses or any special assessment made pursuant to these Bylaws shall be a lien levied against the Lot of such Owner. The Board of Directors or the Manager may file or record notice of any such lien to give record notice of the establishment and the relation back of the priority of such lien to the date of recordation of the Declaration.



9.10.2 In any case where an assessment against an Owner is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the Annual Assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Owner and the Owner's mortgagee by the Board of Directors or the Manager.

9.10.3 The lien for assessment may be enforced and foreclosed in the manner provided by the laws of the State of New Mexico by action in the name of the Board of Directors, or the Manager, acting on behalf of the Association. The Association shall have the right to the appointment of a receiver, if available under the laws of the State of New Mexico.

9.10.4 A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

9.11 **Supplemental Enforcement of the Lien.** In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declaration or these Bylaws, all of the Owners may be required by the Board of Directors to deliver an advance deposit on assessment or to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby.

## **Article 10**

### **Amendments to Articles, Bylaws and Certification of Amendments**

#### **10.1 Amendments; Manner of Approval**

10.1.1 Until termination of the Declarant Control Period, Declarant may unilaterally amend these Bylaws and the Articles of Incorporation if such amendment is (a) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) required by an institutional or government lender, purchaser, insurer, or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association, Federal Housing Administration or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure, or guarantee Mortgage loans on Lots; or (d) otherwise necessary to satisfy the requirements of any governmental agency or other legally binding agreement

10.1.2 During the Declarant Control Period, and except as stated above, these Bylaws and the Articles of Incorporation may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing seventy-five percent (75%) of the aggregate of all Class A votes which have been voted in relation to the proposed amendment. During the Declarant Control Period no amendment by the Owners to these Bylaws or the Articles of Incorporation shall be effective unless approved by the Declarant, as evidenced by Declarant's written approval on such amendment.

10.1.3 After expiration of the Declarant Control Period, these Bylaws and the Articles of Incorporation may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing seventy-five percent (75%) of the aggregate of all Class A and Class B votes which have been voted in relation to the proposed amendment.

10.1.4 Consent to any amendment may be evidenced by votes duly cast by Person or proxy at a meeting called for this purpose or by written consent or ballot. All amendments to the Declaration, required to be approved by the Owners, shall be executed by the President and the Secretary of the Association who shall certify that the requisite votes of approval of any amendment have been obtained.

10.2 **Amendments; Evidence of Approval.** All amendments to these Bylaws shall be executed by the President (or if the President is unavailable by the Vice-President) and the Secretary.

## **Article 11 Miscellaneous**

### **11.1 Notices.**

11.1.1 All notices of meetings under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally, forwarded or if sent by regular mail, postage prepaid, (a) if to a Owner, at the address which the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Owner, or (b) if to the Association, the Board of Directors or the Manager at the office of the Association or at such other address as shall be designated by notice in writing to the Owners.

11.1.2 Demands, bills, statements or other communications may be forwarded via facsimile with evidence of a transmission receipt or via e-mail if an e-mail address is provided to the Association by the Owner.

11.1.3 Other than the notices described in §11.1.2 the Association may provide notice to the Owners or other communications under these Bylaws, through facsimile or e-mail messages or in its regularly published newsletter provided such newsletter is delivered personally or sent by regular mail, postage prepaid as provided herein. If a Lot is owned by more than one person, each such person who so designated an address in writing to the Secretary shall be entitled to receive all notices hereunder.

11.2 **Captions.** The captions hereof are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

11.3 **Gender.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

## **Article 12 Subsequent Amendments to Statutory Laws**

These Bylaws have been drafted with the intention of complying with statutory laws governing community associations. In the event any statutory provision is later amended to provide for more liberal procedures for notices to holders of interests in Lots generally, voting or the operation of such associations, these Bylaws shall be deemed to have been amended to provide for adoption of such

procedures. The provisions of this Article 2 shall not apply to substantive amendments to statutory provisions that are inconsistent with the substantive provisions contained in these Bylaws.

\_\_\_\_\_, President

\_\_\_\_\_, Secretary