

**DECLARATION OF COVENANTS
FOR VALVERDE COMMONS SUBDIVISION**

January 28, 2010

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**DECLARATION OF COVENANTS
FOR VALVERDE COMMONS SUBDIVISION**

This Declaration of Covenants for Valverde Commons Subdivision (Declaration), is made by Valverde Commons, LLC, a New Mexico limited liability company (Declarant).

Recitals

A. Declarant is the sole owner of the real property described on the 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.

B. Declarant further desires to create and implement a general plan for the improvement, development, and use of the real property for the benefit of the Declarant and owners of interests in the Subdivision, and to establish a reasonable procedure for the overall development, administration, maintenance and preservation of the Subdivision, all as provided in this Declaration.

C. It is further the intention of the Declarant to establish a cohousing community for residents fifty-five (55) years and older who desire the freedom and privacy of separate residences, with the feel of an old-fashioned neighborhood. The community will include common buildings and common property for the use and enjoyment of the owners.

Now therefore, Declarant hereby declares that interests in the Subdivision shall be held, sold, used, developed, occupied, leased and conveyed subject to only the following Declaration and the reservations, easements, restrictions, covenants, and conditions contained herein and which shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**Article 1
Plan of Ownership**

The Declarant hereby declares that all interests in the Subdivision shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions as set forth solely in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of such parties.

**Article 2
Definitions**

2.1 **Allocated Share:** the share allocated to each Owner for liability for Common Expenses.

2.2 **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 this Declaration, the Bylaws, Subdivision Rules or Development Review Committee (DRC) Rules, and chargeable to any Owner.

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

2.4 **Association:** the Valverde Commons Association, Inc. a New Mexico nonprofit corporation, its successors and assigns.

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

2.6 **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.

2.7 **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.

2.8 **Bylaws:** the bylaws of the Association, as amended.

2.9 **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.

2.10 **Common Buildings:** the Common House and Common Barn further described in §3.2.

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

2.12 **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 this Declaration, the Bylaws or a resolution of the Board and Reserves Assessments.

2.13 **Common Expense Fund:** the fund created by the Board pursuant to §13.3.1.

2.14 **Common Expense Liability:** each Owner's share of liability for payment of Common Expenses based on each Owner's Allocated Share as provided in Article 13.

2.15 **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.

2.16 **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.

2.17 **Common Property:** the Common Buildings, Common Furnishings, all roads, pathways, open spaces, and easements on the Subdivision Plat, including, without limitation, the roads identified as Valverde Commons Drive and Valverde Commons Loop as identified on the Subdivision Plat, and any other real or personal property acquired by the Association, all for use by all Occupants, Owner's guests and invitees .

2.18 **Consent of a Majority of Owners:** an affirmative vote representing more than fifty percent (50%) of the votes of the Owners; such consent shall be evidenced by written ballot signed by the Owner or the Owner's proxy, delivered at a meeting of the Association. Such consent may also be evidenced by a written consent delivered to the Secretary within a time period set by the Board without a meeting required of the Owners.

2.19 **Construction Area Plan:** the plan described in §11.5.

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.

2.21 **Construction Deposit:** the deposit required from Lot Owners under §10.6.3.

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

2.23 **Declarant Control Period:** the period of time during which Declarant retains the rights of a Class B Member and the power to appoint some members of the Board and other rights described in this Declaration.

2.24 **Declaration:** this Declaration of Covenants, Conditions and Restrictions for Valverde Commons Subdivision, as amended.

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

2.26 **Design Review Committee or DRC:** the committee created pursuant to Article 10.

2.27 **Design Review Committee Rules or DRC Rules:** such rules and regulations as are adopted by or for the DRC pursuant to either Article 10 or the Bylaws.

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

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

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

2.31 **Governing Documents:** the Declaration, Articles of Incorporation, Bylaws, DRC Rules, Subdivision Rules, as amended or supplemented from time to time..

2.32 **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.

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

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

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

2.36 **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.

2.37 **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.

2.38 **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 Declarant shall be deemed an Owner of any Lots owned by Declarant. The foregoing does not include Persons or entities who hold a Security Interest in any Lot.

2.39 **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 §§6.3.4, 6.3.2 or 6.7.2.

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

2.41 **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.

2.42 **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.

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

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

2.45 **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 any monetary obligations to the Association or any provision of the Governing Documents.

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

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

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

2.49 **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.

2.50 **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.

2.51 **Special Expenses:** the special allocations and expenses charged against an Owner as provided in §13.7.

2.52 **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.

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

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

2.55 **Transfer Fee:** the fee charged to a purchaser of a Lot from an Owner as described in §13.13.

Article 3

Property Subject to Declaration; Improvements to Common Property

3.1 **General Declaration.** Declarant hereby declares that this Declaration benefits and burdens the Property consisting of the Lots and the Common Property and that these lands shall be held, sold, used, developed, occupied, leased and conveyed subject to the reservations, easements, restrictions, covenants, and conditions contained in this Declaration and in the deed to the Owner. This Declaration shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns of such parties, and shall inure to the benefit of each Owner thereof.

3.2 **Common Buildings.** The Declarant shall construct the Common Buildings, at Declarant's expense. The Common House shall consist of not less than 2,000 square feet (measured by exterior boundaries) and at a minimum shall contain kitchen and dining facilities and facilities for meetings and mail collection. The Common Barn shall contain space for a workshop, garage, storage for garden and landscape equipment and tools, and an area (either in or outside) for recycling collection. The design, size, elements, features and construction of these facilities shall be at the time and in the manner as Declarant may determine, in its sole discretion. The Common Buildings shall be substantially completed the earlier of three (3) years from the date of recording this Declaration or termination of the Declarant Control Period as provided in §12.4.

3.3 **Common Roads, Infrastructure and Pathways.** Declarant shall construct the roads and infrastructure described on the engineering plans to be recorded with the Subdivision Plat and shall do so at Declarant's expense within two (2) years of recording the Declaration. Declarant shall construct the pathways in the Common Property, at Declarant's expense, with materials which enable a wheelchair to be rolled on the pathways without undue difficulty. The location and numbers of pathways shall be determined by the Association after foot traffic patterns are observed, and the pathways shall be constructed within four (4) years of recording this Declaration.

Article 4

Conditions of Approval; Partial Incorporation of Subdivision Plat Notes

4.1 **Subdivision Plat Notes.** The approval of the Subdivision incorporates conditions as set forth on the Subdivision Plat. These conditions shall be deemed to be incorporated into this Declaration. All notes and other information of every kind which is shown on the Subdivision Plat and that entire Plat itself is incorporated here by reference.

Article 5
Rights of Owners; Nonexclusive Easements;
Easements in Favor of Association

5.1 **Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association:

5.1.1 to suspend an Owner's voting rights and right to use the Common Property for any period during which any Assessment against an Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of this Declaration and the Rules and Regulations of the Board;

5.1.2 after notice to an Owner, to exclude from the Property any agent, employee or guest of any Owner, who the Association determines to be disruptive to the quiet enjoyment of the Property;

5.1.3 to grant or deny easements appurtenant to Lots for encroachments of improvements onto the Common Property; and

5.1.4 to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners, agreeing to such dedication or transfer has been recorded.

5.2 **Delegation of Use.** Any Owner may delegate, in accordance with the Declaration, Bylaws, Rules and Regulations, the Owner's right of enjoyment to the Common Property to the members of the Owner's family or tenants, or contract purchasers of a Lot who reside on the Lot.

5.3 **Utility, Parking, Drainage, Pathway, Decorative and Other Easements.** Declarant and the Association shall have Easements outside the Building Envelopes, as shown on the Subdivision Plat, the recorded engineering plans or as stated in the Owner's deed, and also near the corners of each Lot located at an intersection of streets and/or pathways within the Subdivision for utilities, parking, roads, drainage features including without limitation culverts and ditches, pathways, and to install decorative entrance treatment and signs.

Article 6
Adult Community; Occupancy Use Restrictions; Rental

6.1 **Use of Residences.** All Residences shall be used only for dwelling purposes and such home occupations or uses which are permitted by the Town Development Code. Owners may rent or lease the Owner's Residence or a part thereof to a Qualified Occupant, provided such uses or occupancy are permitted by the Town Development Code and comply with the provisions below. Without limiting the generality of the foregoing, no use of a Residence shall be conducted which may qualify as a "place of public accommodation" as defined in the Americans With Disabilities Act (42 U.S.C.

§§1201 *et seq.*).

6.2 Restriction on Occupancy of Residences; Generally. The Residences within the Subdivision are intended for the housing of persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a Residence along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Section. In addition, certain exceptions may be made pursuant to §§6.3 and 6.7. The provisions of this section are intended to be consistent with, and are set forth in order to comply with, the Fair Housing Acts, regarding discrimination based on age and familial status. Declarant, until termination of the Declarant Control Period, or the Association after the termination of the Declarant Control Period, acting through its Board, shall have the power to amend this §6.2, without the consent of the Owners or any other Person, for the purpose of making this section consistent with the Fair Housing Acts, the regulations adopted pursuant thereto, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this section.

6.3 Qualified Occupants.

6.3.1 Except as may otherwise be permitted pursuant to this section and §6.3.4, each occupied Residence shall at all times have as a Permanent Occupant at least one person who is fifty-five (55) years of age or older who is the Qualified Occupant, except that in the event of (a) the death of a person who was the sole Qualified Occupant of a Residence; (b) a legal separation or divorce resulting in the Qualified Occupant of a Residence moving out of the Residence; (c) the removal by reason of incapacitation (*e.g.*, being placed in a nursing home) of the Qualified Occupant, the spouse (or former spouse, in the case of a divorce) and any other members of the household occupying the Residence in compliance with this Section prior to the death, legal separation or divorce, or incapacitation of such Qualified Occupant, may continue to occupy the Residence provided that the provisions of the Fair Housing Acts and the regulations adopted thereunder are not violated by such occupancy; or (d) the Residence is occupied by an employee of the Association and his or her family.

6.3.2 Provided it complies with the Fair Housing Act, and provided at the time that at least eighty percent (80%) of the occupied residential units in the Subdivision are occupied by at least one person who is fifty-five (55) years of age or older, a caretaker who stays on the Lot temporarily at the request of the Owner to care for pets, plants or the premises and who does not pay rent for doing so need not be a Qualified Occupant, and during such periods when a caretaker of this type is on the premises and the Owner or other Permanent Occupant is absent, the Residence shall be deemed not occupied for the purposes of § 6.3 and not rented for the purposes of §§ 6.6 and 6.7.

6.3.3 Nothing in §6.2 is intended to restrict the ownership of or transfer of title to any Residence; however, no Owner may occupy the Residence unless the requirements of Article 6 are met, nor shall any Owner permit occupancy of the Residence in violation of Article 6. Owners shall be responsible for (a) including a statement that the Residences within the Community are intended for the housing of persons fifty-five (55) years of age or older, as set forth in §6.3, in conspicuous type in any lease or other occupancy agreement or contract or sale relating to such Owner's Residence, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and (b) clearly disclosing such intent to any prospective tenant, purchaser, or other potential Occupant of the

Residence. Every lease of a Residence that fails to comply with the requirements and restrictions of Article 6 shall constitute a default under the lease and a violation of this Declaration..

6.3.4 Any Owner, in writing, may request that the Board of Directors make an exception to the requirements of this §6.3 with respect to his or her Residence. The Board of Directors may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Fair Housing Acts would still be met.

6.4 Change in Occupancy; Notification. In the event of any change in occupancy of any Residence or other residential unit on a Lot as a result of a transfer of title, a lease, sublease or rental, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Residence shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Residence and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Residence or Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of §6.2 and Article 6, in addition to all other remedies available to the Association under this Declaration and state law.

6.5 Monitoring Compliance; Appointment of Attorney-in-Fact.

6.5.1 The Association shall maintain age records on all occupants of Residences. The Board shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with §6.2, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to §6.3.4, and enforcement. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and Mortgagees upon reasonable request.

6.5.2 The Association shall have the power and authority to enforce §6.2 in any legal manner available, and the Board shall take such action as the Board deems necessary and appropriate to monitor compliance and enforce §6.2 and Article 6, in order to preserve its ability to enforce §6.2 and the Community's eligibility for exemption from the Fair Housing Acts. Such action may include, without limitation, conducting a census of the occupants of the Residences, requiring copies of birth certificates or their proof of age for each occupant of the Residence to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Residence which is not in compliance with the requirements and restrictions of the §6.2 and Article 6. Each Owner hereby appoints the Association as its Attorney-in-Fact for the purpose of taking legal action to dispossess, evict, or otherwise remove the occupants of his or her Residence as necessary to enforce compliance with this §6.2 and Article 6. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Residence that, in the judgment of the Board, are reasonably necessary to monitor compliance with this §6.2 and Article 6.

6.5.3 Each Owner shall be responsible for ensuring compliance of its Residence with the requirements and restrictions of this Article and the Subdivision Rules by the Owner's tenants and other Occupants of the Owner's Residence. Each Owner, by acceptance of title to a Residence, agrees to indemnify, defend, and hold the Association harmless from any and all claims, losses, damages, and causes of action that may arise from failure of such Owner's Residence to so comply. Further, each Owner must sign a "Commitment to Uphold Age Restrictions."

6.6 **Rental Restrictions.** In addition to the restrictions set forth in this Declaration, all Qualified Occupants must complete such forms as required by the Association to educate such Qualified Occupants of the nature of the community and to ensure their agreement to be bound by the policies of the Association. Qualified Occupants intending to reside in the Subdivision for a period of time in excess of thirty (30) days shall also attend an orientation meeting organized by the Association, shall endorse and agree to be bound by the Vision Statement of the community and all its covenants, restrictions, Bylaws, rules and regulations and policies.

6.7 **Further Rental Restrictions; Short Term Rentals; Long Term Rentals.**

6.7.1 Regarding short term rentals, an Owner may rent all or a part of the Owner's Residence to a Qualified Occupant for a period of thirty (30) days or less but may do so only once annually. If in the course of a year an Owner does not rent the Residence short term as above, the Owner may rent a guesthouse which is attached to the Residence in the manner described in § 8.4 to a Qualified Occupant for a period of thirty (30) days or less but may do so only once annually. Only one short term rental is permitted per year for the entire Lot. No other short term rentals are permitted.

6.7.2 An Owner is permitted to rent or lease all or part of the Owner's Residence to a Qualified Occupant for long term rental periods, that is rental periods of six (6) months or more, provided the other provisions of this § 6 and this Declaration are satisfied. An Owner may rent or lease a guesthouse or studio attached to the Residence as described in § 8.4.1 by a common, shared wall provided the rental is to a Qualified Occupant for long term rental periods in excess of thirty (30) days and provided the other provisions of this Declaration are satisfied. An Owner may not rent a studio which is not attached to the Residence by a common wall in the manner described in § 8.4.1 but which instead is attached only by a free standing wall or walled walkway described in § 8.4.2. Notwithstanding the above, if at least eighty percent (80%) of the occupied residential units in the Subdivision are occupied by at least one person who is fifty-five (55) years of age or older, an Owner may rent all or a part of the Property for the above long term rental periods to a tenant who is younger than Fifty-five (55) years of age if that tenant is providing substantial care-giving services to either the Owner or to other Owners or Qualified Occupants in the Subdivision and if such rental does not violate the Fair Housing Act or any other provision of law.

6.7.3 Notwithstanding anything above, an Owner may have no more than one residential unit or room rented or leased at any time and, unless the unit rented is the whole primary Residence (which may be rented to a couple), there shall be no more than one tenant occupying any portion of a Lot at any time.

6.7.4 If an Owner elects to rent all or any portion of a Lot to a tenant, the Owner shall make

sure that the Occupant is Qualified (55 years or older), is familiar with the policies set forth in this Declaration, and complies with the requirements of § 6.6. An Owner shall obtain any necessary approvals from the Town of Taos for all rentals.

6.7.5 In the event the Board determines that rental of Residences or guesthouses or studios is inconsistent with or contrary to the goals of the community, the Board may recommend modification of these provisions by an amendment to this Declaration as provided in Article 14. In the event of a change by the Association in the rental policy stated above, no Owner shall have a vested right in the continuation of the prior policy except that an Owner who has been renting all or a portion of the Lot to a tenant shall have the right to continue renting to the same tenant on the same terms until the end of the then current period of that tenancy.

Article 7 Use Restrictions

7.1 **Residential Use.** The Lots shall be used, improved, and devoted exclusively to Residential Use. No business or commercial activity frequented by and open to the general public shall be permitted or conducted within a Lot or within the Subdivision except a limited home occupation that complies with the provisions of the Town Development Code, for which the Owner shall obtain a business license from the Town of Taos and which shall be restricted to: one additional employee besides the Owner, no signage indicating the nature or location of the business, no traffic in excess of normal residential traffic for this type of residential area (that is no more than an average of four(4) vehicle trips per business day), no environmental or other impacts inconsistent with the peace, health and harmony of the residential area, and no business or commercial activity which takes place outdoors. Nothing contained herein shall be deemed to prevent the leasing or rental of a Lot or portion thereof as stated in § 6 above and which is otherwise in accordance with all provisions of this Declaration.

7.2 **Water Use Limitations.** The following additional provisions apply to Lots:

7.2.1 Water saving fixtures shall be installed in all new construction. Water saving fixtures shall include, but not be limited to, low flush toilets, low flow fixtures, and insulation of hot water pipes. Toilets shall use no more than 1.6 gallons per flush; shower head flows shall not exceed 2.5 gallons per minute; and faucet flow shall not exceed 2.5 gallons per minute.

7.2.2 Evaporative coolers and air conditioners are permitted only if installed with the approval of the DRC and upon demonstration to the DRC by the applicant that an evaporative cooler or air conditioner is necessary for the comfort or health of the Occupant.

7.2.3 Dishwashers shall use no more than 13 gallons in a regular cycle and shall have a cycle adjustment which allows reduced water to be used for reduced loads.

7.2.4 Washing machines shall use no more than 25 gallons in the regular cycle and shall have cycle or water level adjustments which permit reduced amounts of water to be used for reduced loads.

7.2.5 Except as provided herein an Owner shall be free to plant such vegetation on the Owner's Lot as the Owner may desire. Low water use landscaping techniques applying the principles of permaculture, xeriscaping and drip irrigation are encouraged, as are low water use grasses, plants, shrubs and trees. Lawns of non-native grasses shall not exceed 400 square feet per Lot or such other size as the Board may determine. Gray water systems are also encouraged and shall meet the requirements of the New Mexico Construction Industries Division and other applicable regulatory requirements. No trees or shrubs which may block views of immediate neighbors or which may grow to a height of twelve feet (12') or more may be planted or maintained on a Lot unless approved by the DRC. In reviewing applications to plant such trees or shrubs the DRC shall do its best to determine whether such shrub or tree may impair a neighbors view or solar access, and if the DRC so determines, it shall prohibit such planting. The DRC may prepare a list of plants, shrubs or trees which are prohibited for health or other reasons, (such as that they are invasive species) and no plant on such list shall be planted or maintained on a Lot. The DRC and the Association shall not be responsible for any undesirable effects of any planting whether or not the planting has been expressly reviewed or approved by the DRC.

7.3 **Maintenance by Owners.** Each Owner or Occupant shall keep the Lot and the Structures on it in a good state of repair and cleanliness.

7.4 **Peaceful Enjoyment.** No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Subdivision by the Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others.

7.5 **Animals.** Except as provided herein, no animals of any kind may be kept on any Lot, whether for Personal or commercial purposes. Each Lot may have a maximum of three (3) dogs or cats or any combination thereof (a maximum of three animals), exclusive of litters of such pets which must be disposed of within four (4) months of birth, and all of the permitted animals shall be confined to the property. No pets will be allowed to roam at will within the Subdivision. Large animals, such as horses, pigs, sheep, cows or goats, wild animals or any other agricultural animals may not be maintained on any Lot. No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary herein above notwithstanding. The Board of Directors of the Association shall have the right to order the removal of any animals which are kept in violation of this Declaration. Enclosures for animals shall be constructed in accordance with this Declaration. Small household pets which remain inside the Residence on a Lot, such as caged birds, aquarium fish, turtles or guinea pigs, shall be allowed at the Lot Owner's discretion so long as the nuisance portions of this provision are not violated. The Association may adopt further rules regarding animals.

7.6 **Billboards and Signs.** Except as allowed and permitted under §7.7 in relation to the Declarant, no billboards or advertising signs will be permitted on any Lot or on any building except the name plate of the occupant of any residence located on such residence. No sign or name plate shall exceed one (1) square foot in size. The street address shall be placed at the entry to the driveway of a Lot or in such other convenient location as the DRC may approve. Declarant shall be permitted

to install one (1) standard real estate sign on any unsold Lot. An Owner shall be permitted to install a standard real estate sign on her Lot for any re-sale of that Lot. Temporary signs for gatherings, garage sales, open houses and similar events are permitted provided such signs are removed within twenty-four (24) hours after the end of the event. If not removed, these temporary signs may be removed by the Board or its agents without notice to any Owner. Temporary construction signs are restricted as provided in §11.15. This restriction shall not apply to a single open house sign, advertising the sale of a Residence that may be posted directly in front of a Lot only during actual open house hours. No other signs shall be posted on a Lot or on the Common Property. The provisions of this subparagraph shall not be applicable to any Mortgagee which comes into possession of any Lot by reason of any remedies provided for in the mortgage, foreclosure of any mortgage or other proceeding in lieu of foreclosure.

7.7 **Declarant's Use for Marketing.** Notwithstanding any provision of this Declaration to the contrary, Declarant shall have the right to have a sales and administrative office and/or model home, and also such promotional signs and equipment as Declarant may deem reasonably necessary for the conduct of marketing of Lots. This right in the Declarant shall exist so long as Declarant owns any Lot.

7.8 **Lighting.** All exterior lights must be downlit and located so as not to be directed toward or illuminating surrounding Lots or the Common Property. Bright, glaring lights on roof tops, through skylights and patio walls or elsewhere are prohibited. All exterior lighting must be shown on the Development Plan and approved by the DRC prior to installation.

7.9 **Hunting and Firearms.** No hunting shall be permitted within the Subdivision, and no discharge of firearms shall be permitted within the Subdivision.

Article 8 Residential Structures on Lots; Development Plan

8.1 **Requirements.** Before construction of any Structure or improvement or planting of any tree or shrub which may block views or grow to more than twelve feet (12') in height on a Lot, the Owner thereof shall comply with the requirements of this Article 8. The construction or placement of a Structure, Improvement, or controlled tree or shrub shall not vary from the approved Development Plan in any material respect without written approval by the DRC.

8.2 Development Plan; DRC Approval Required; Enforcement.

8.2.1 Each Owner shall be required to submit a detailed Development Plan, in compliance with DRC Rules. Each Development Plan must be first approved, in writing, by the DRC prior to the commencement of construction of any Improvement. No construction of any Structure whatsoever, including, without limitation, site preparation, clearing of trees, excavation, or remodeling shall commence without the prior written approval of the DRC. All construction and development shall comply strictly with the approved Development Plan.

8.2.2 Each Person acquiring any portion of the Property acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of Declarant and other Owners in the Subdivision, and the Declarant and other Owners, the DRC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation. This provision shall be in addition to any other remedies available hereunder or at law or equity.

8.3 **Intent.** The intent of Declarant herein is to:

8.3.1 promote architecture which is both harmonious with and responsive to the existing topography, landscape, and historic Taos Pueblo Revival, Taos Territorial, and Northern New Mexico Spanish Colonial pitched roof styles;

8.3.2 encourage buildings which respect and merge with, rather than dominate, the natural landscape;

8.3.3 attempt to ensure the protection of solar access and Primary Viewsheds for the various Lots while recognizing that complete protection is not always possible;

8.3.4 minimize use of bright or garish colors, reflective surfaces, and unnecessary light pollution; and

8.3.5 avoid large-scale monolithic Structures.

8.4 **Residence.** No Structure shall be erected, altered, placed or permitted to remain on any Lot other than one Residence for private use together with an attached studio, and an attached private garage and/or carport/storage area, and an attached guesthouse (if permitted by the Town).

8.4.1 “Attached” in relation to the garage, carport, storage area and guesthouse shall mean attached by a common, shared wall to the Residence, with the common wall being at least fifty percent (50%) of the total length of the wall of the garage, carport or guesthouse which adjoins the Residence. The adjoining garage, carport, storage area or guesthouse shall be designed and built so as to be a harmonious with and an integral part of the Residence. A studio may also be attached by a common wall in this same manner as described above for a garage, carport, storage area or guesthouse, and this manner of attaching a studio is encouraged, though not required if the method described in §8.4.2 below for a studio is utilized.

8.4.2 “Attached” in relation to a studio which is not attached as described in § 8.4.1 shall mean attached by a stuccoed wall at least half of which is between five and one-half and six feet (5 ½ and 6') in height, or by a roofed walkway which has a stuccoed wall(s) along one or both sides. The wall or walled walkway shall be built in such a manner that it and the buildings it joins form a courtyard. This wall or walkway may have an entry gateway located in it. The studio and wall or walkway shall be designed and built so as to be harmonious with the Residence.

8.5 Studios; Guest Houses; Storage and Other Attached Structures. The construction of studios, guest houses, storage buildings and other Structures are permitted only if attached to the Residence in compliance with the provisions of §8.4 and this Declaration. Guest houses, studios and other Structures attached to the Residence by a common, shared wall, in compliance with §8.4.1 may be used for permanent or continuous residency so long as such use complies with Article 6 above. Studios attached by the method of the wall or walkway described in §8.4.2 may not be used at any time for permanent or continuous residency.

8.6 Energy Efficient; Solar. All Structures on Lots must be designed and built to be energy efficient. Each Structure shall have a sufficient combination of energy conservation features and renewable energy utilization features so that the net energy consumption of the Structure is substantially less than would be permitted by the applicable state and municipal building codes (“Codes”) and is as close to net zero energy use as is feasible economically and aesthetically. “Energy conservation features” include, but are not limited to, more insulation than is required by the Codes, high efficiency windows and doors, and heat recovery systems. “Renewable energy utilization features” include, but are not limited to, orientation of the Structure so as to be able to receive solar energy, and passive and active solar collectors. The Association may adopt rules and regulations in relation to all the above features to encourage: use of features which conserve energy and utilize renewable energy, integration of such features into the architecture, and use of non-reflective glass; and to discourage, regulate or prohibit use of such features in a manner which might be detrimental to other Owners or the neighborhood.. All appliances used in a Structure shall be Energy Star or equivalent.

8.7 Prohibited Structures. No temporary: house, dwelling, garage, outbuilding, trailer or other Structure shall be placed or erected upon the Subdivision. This prohibition shall not apply to temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any work or improvement by the Declarant or as otherwise permitted by this Declaration. The following structures are prohibited:

8.7.1 mobile homes, manufactured homes or modular homes or other structures, as these terms are customarily used;

8.7.2 movable or portable housing structures constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit;

8.7.3 modular pre-manufactured homes, built to uniform building code standards, designed to be permanently affixed to real property;

8.7.4 multi-section manufactured homes comprised of a manufactured home or modular home that is a single-family dwelling constructed in a factory to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction

and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or the Uniform Building Code, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act and with the rules made pursuant thereto relating to permanent foundations; or

8.7.5 movable or portable: housing, studio, storage or other Structure, whether or not designed for and occupied by no more than one family for living and sleeping purposes that is not constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or Uniform Building Code, as amended to the date of the unit's construction or built to the standards of any municipal building code.

8.7.6 any guesthouse, studio, garage, carport, storage area or other Structure not attached or built in the manner described in § 8.4.

8.8 **Building Envelopes.** All Structures of every kind must be built and located completely within the Building Envelope designated on the Subdivision Plat. At the request of the Owner, the DRC shall have the right to modify or enlarge the Building Envelope for each Lot shown on the Subdivision Plat, after consideration of all relevant factors, including, without limitation, solar access and the Primary Viewshed of the other Lots affected by the proposed construction. The DRC shall not modify or enlarge the Building Envelope if the DRC determines that such change would unreasonably impair solar access or the Primary Viewshed of another Lot or have a substantial negative impact on the use and enjoyment of another Lot or the Common Property.

8.9 **Design Standards.** Any and all Structures of every kind, including without limitation Residences, studios, guesthouses, garages, storage areas, walls or fences shall be Taos Pueblo Revival, Taos Territorial, or Northern New Mexico Spanish Colonial pitched roof in style as the same are described in the "Standards for Non-Contributing Properties" sections of the Town Development Code for structures in the "Historic Overlay Zone", or such other style(s) as the DRC deems compatible and harmonious with the foregoing styles. Examples of design elements related to "other styles" which the DRC shall find harmonious and compatible with the foregoing styles are passive solar features such as greenhouses on the south side of a Residence (to take advantage of solar gain) and large windows on the east side of the Residence (to take advantage of views) provided such design elements otherwise conform with the requirements of this Declaration and are integrated into the design of a Structure which is harmonious and compatible with the foregoing styles. In addition all Structures in the Subdivision shall be constructed in accordance with the following criteria:

8.9.1 All homes and any other Structures on a Lot shall have at least sixty percent (60%) of the total exterior area of the walls (as calculated below) finished in a stucco color from the palette approved by the DRC. To calculate the area finished in stucco, the total area of the north, east, and west walls of the Structure shall be combined, including all glazing, windows and doors, and this combined area shall be the denominator. The numerator for the calculation of those three walls combined shall be the area of those walls which is to be stuccoed, meaning the total wall area minus the glazing, windows, doors, and any other parts of the walls which are not stuccoed. For the south

wall of the Structure the exterior wall area to be stuccoed shall be calculated in a similar manner but excluding all glazing, windows and doors.

8.9.2 The color of the exterior stucco of all Structures shall be one from the palette of colors approved by the DRC. Entries and portals may be emphasized by the use of matte off-white (yeso) or other colors approved by the DRC. Except for trim, the painting of the stucco portion of the exterior of Structures is prohibited.

8.9.3 Pitched roofs shall be permitted if such roofs are non-reflective, oxidized grey, tan, copper; or other colors approved by the DRC and shall conform to or be harmonious with accepted New Mexico Spanish Colonial pitched roof style, and are integrated into the main residential Structure, for example by portals, and otherwise comply with the other design requirements of this Declaration.

8.9.4 The exterior construction, including the final stucco color coat, paint, and trim shall be fully completed within the Construction Deadline Period.

8.9.5 No residence placed or erected on any Lot shall be occupied in any manner while in the course of construction or at any time prior to the time when the exterior is fully finished as herein required, the residence is fully functional and it has received a residential occupancy permit.

8.9.6 The approval of a Development Plan or the determination of permissible or prohibited architectural styles shall be in the sole discretion of the Design Review Committee. The only requirement for the DRC shall be that it act in good faith for the benefit of all the Owners of all the Lots.

8.10 **Height Limitations.**

8.10.1 No Structures shall exceed a height of seventeen (17) feet. However, the chimney, vents or mechanical features of the Structure which must be placed on or protrude above the ridgeline of the roof or the top of the parapet are permitted but may extend beyond the ridgeline or the parapet by no more than three (3) feet. The height of a Structure shall be measured at the highest point of the undisturbed ground surrounding the Structure or the highest point of the undisturbed ground of the adjoining Lots, whichever is higher. All Structures shall comply with the Town Development Code height restrictions.

8.10.2 In order to insure compliance with height restrictions, as part of the final Development Plan submittal and prior to any site work being undertaken, or at any time during the building process if the DRC is uncertain whether the Structure conforms to this height restriction, the DRC may require the Owner or Builder to provide proof of the height of the Structure, including requiring the Owner or Builder to retain a licensed New Mexico surveyor or engineer to:

8.10.3 establish the permanent benchmark outside of disturbed area and the elevation of highest natural grade to be used to measure the height; and

8.10.4 based upon such benchmark, establish the elevation of the finished roof, parapet and protrusions above them at completion of foundation or stem walls and certify compliance with approved plans and this Declaration. This certification shall be delivered to the DRC.

8.10.5 At any time during or after framing, the DRC may require the Owner or Builder to provide evidence or to certify that the finished height of the residence complies with these requirements. Should the height, in any aspect, exceed the standards set forth herein, the Owner or Builder shall immediately bring the residence into full compliance.

8.11 Reflective Materials. Solar panels and devices are encouraged in the Subdivision, and therefore some reflection on other home sites for short periods of time may occur and will ordinarily be tolerated. However, solar panels, devices and other reflective material shall not be used in a manner where it would unduly affect any other home site within the Property or the Common Property. If the DRC finds that reflection is likely to or does unduly affect another home site or the Common Property (for example the reflection occurs or is likely to occur for more than one-half hour), the DRC may order that the Owner of the solar panel, solar device or reflective material causing the problem shall take action to remedy the problem. The DRC may order that the Owner, move the solar panel, solar device or the reflecting material, remove it, paint it, screen it from view in a manner acceptable to the DRC or take other appropriate steps to eliminate or mitigate the problem. The DRC may take similar action in relation to roofing or other materials causing or likely to cause such problems.

8.12 Rooftop Equipment. Items emerging from rooftop penetrations or placed on a roof shall not protrude any higher above the ridge line or parapet height than is required by applicable building codes or law or engineering requirements, and in no event may any such item protrude higher than permitted in Section 8.10. Where such items must by code or law protrude higher than the roof line or parapet, the DRC may direct that they shall be enclosed in a plaster chase resembling traditional Taos Pueblo Revival or Taos Territorial style chimney construction.

8.13 Solar; Satellite Dishes and Mechanical Devices. It is the desire of the community to encourage use of solar energy and also to protect the ability of Owners and Occupants to enjoy the Property. The installation of solar panels and collectors, satellite dishes and any other mechanical or other devices installed or maintained on the roof or exterior surface of any Structure or on a Lot must meet such standards as may be adopted by the DRC to protect the interests expressed above.

8.14 No Subdivision of Lots.

8.14.1 No further subdivision of any Lot shall be permitted nor shall the ownership interests in a Lot be further divided under the Subdivision form of ownership or creation of time share interests.

8.14.2 The relocation of Lot boundaries or replatting of Lots shall require the prior approval of the DRC, the Board and the Town of Taos. Relocation of any boundaries or replatting of Lot boundaries shall be evidenced by recordation of a plat of survey in the real estate records of Taos County, New Mexico which plat shall specify any such modification and set forth the metes and

bounds description of the newly-created Lots. Once combined or replatted, the newly created Lot shall not be re-subdivided thereafter. The combination of Lots shall not relieve the Owner from payment of Assessments for the original number of Lots and the Owner shall continue to have the right to the same number of votes allocated to the Lots before the Lots were combined.

Article 9

Other Common Scheme Restrictions and Requirements

9.1 **Trees and Landscaping.** The planting of trees and shrubs and the landscaping for all Lots shall comply with the provisions of this Declaration and shall be the responsibility and at the expense of the Owner of her Lot. Creation of a proposed plan for the initial landscaping and landscaping improvements of the Common Property shall be the responsibility of the Declarant in cooperation with a committee of the Board. The proposed plan shall be voted upon by the Board and, if approved, be submitted to the Owners for their vote in the same manner as the budget. The Declarant shall pay for the cost of preparing the plan. The installation of the first stage of landscaping shall be the responsibility of the Declarant up to (but not exceeding) the amount remaining in Declarant's budget for the plan and the installation after payment for the plan. Any additional cost for the approved plan and its installation shall be paid by the Class A Members as a special assessment.

9.2 **Driveways.**

9.2.1 Private driveways or parking areas shall be constructed only in the areas permitted on the Subdivision Plat or in such other areas as may be approved by the DRC. All driveways and parking areas shall be the sole responsibility of the Owner and shall be maintained by the Owner so as to reduce erosion and eliminate unsightly conditions.

9.2.2 Driveways shall be graded and sloped for proper drainage and shall have culverts or swales where the driveway crosses the roadside barrow ditch. The culverts or swales shall be sufficient to carry all runoff and shall be installed and maintained by the Owner so as not to impede the drainage path.

9.3 **Utilities.** Except for such facilities as the utility company requires be placed above ground, all electrical service, gas lines, water lines, cable television, telephone lines or other utilities shall be placed underground. All utilities shall be installed in or adjacent to the driveway, unless the DRC expressly approves another location. The Owner shall provide to the Association for its records a location map of all utilities on the Lot. Any above ground utility installation shall be shielded from view. Additional utility easements as shown on the Plat are imposed on the Lots.

9.4 **Fences and Walls.**

9.4.1 It is the intention of the Declarant that the lands within the Subdivision be maintained with decent views and that residents of the community be able to see each other from time to time as they walk around the community. Therefore fences and walls which block views or which completely block seeing neighbors from the common areas are discouraged, although it is expected that some privacy walls will be erected. No fence or wall shall exceed six feet (6') in height, except as may be necessary to comply with the screening required in §9.5 (and then only if permitted by the

Town). Low walls (two (2) feet to three (3) feet in height) are encouraged especially along the perimeter of a Lot abutting a roadway, under conditions approved by the DRC..

9.4.2 Plans for all walls and fences must be shown on the architectural or landscape plans submitted to the Design Review Committee, and shall be reviewed, approved or rejected pursuant to the provisions of these covenants. All fences and walls shall be compatible with other Structures erected on the Lot with respect to design, materials and color. The Design Review Committee may require landscaping to be installed as partial screening for walls and fences, as well as Structures, constructed on any Lot.

9.4.3 Fencing materials may be coyote style constructed of aspen, fir or cedar posts or pilasters or walls of either (a) adobe (plastered or unplastered), or (b) plastered masonry walls. Chain-link or bark-faced fences are strictly prohibited.

9.5 **Recreational Vehicles.** Except as stated below outdoor storage of recreational vehicles is prohibited on any Lot. Small recreational vehicles, campers, boats, trailers for boats, vehicles and horse trailers, and other vehicles and trailers, of a size and type approved by the Board, may be stored on a Lot subject to compliance with the conditions imposed by the DRC, which requirements shall include, but are not limited to, the screening of such vehicles from view by means of landscaping, walls or fences as approved by the DRC.

9.6 **Trash and Noise.**

9.6.1 Except as allowed during construction or except for the use of a single household size bin provided by the Town for household trash and garbage, no Lot shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any Occupants or Owners of Lots. Compost piles for gardening are permitted, but must be fenced or enclosed and maintained in a manner that complies with the provisions of this Declaration and the Subdivision Rules.

9.6.2 Before and after construction, the storage of construction material, supplies and equipment shall be prohibited unless placed out of view of other Lot Owners.

9.6.3 All mechanical and other equipment, materials, and storage piles on any Lot shall be walled in and/or screened at all times so that these items may not be seen from any other Lot or the Common Property.

9.6.4 No devices or animals creating undesirable or annoying noise levels shall be permitted on the Property.

9.6.5 During or after construction of Improvements upon any Lot, no concrete slurry or asphalt or other waste material shall be allowed to accumulate or be left on any Lot or be disposed

of on the Common Property or any Lot.

9.7 Parking Spaces; Garages; Carports.

9.7.1 Each Lot shall be served by the private or shared parking areas shown on the Subdivision Plat. An Owner may have other parking areas on a Lot provided the same are approved by the DRC and provided that they meet all the requirements hereof, including the provision of adequate drainage. For the Lots upon which parking spaces are located, screening, either with vegetation or a low site wall, may be required by the DRC to minimize the visual appearance of the parking area. Some Lots are subject to easement(s) for parking to benefit the Association or other Owners.

9.7.2 Permitted boats, campers, trailers, similar mobile vehicles or structures, and small recreational vehicles shall be completely screened from view of other Lots and the Common Property by means of a coyote fence, wall, landscaping or similar treatment.

9.7.3 No sheds shall be permitted without prior written approval of the Design Review Committee. Any such storage shed erected on any Lot shall meet the design requirements of Article 8, and the DRC may require that they be screened from view from other Lots and the public view in a manner approved in writing by the DRC before the shed is constructed.

9.7.2 Except for areas designated by the Board, no vehicles of any type shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots or the public view for purposes of repairs or reconstruction or storage.

9.8 Storage Tanks. Except for water tanks and equipment constructed by Declarant or Declarant's agents for water and utility service or as part of the Common Property, no elevated tanks of any kind shall be erected, placed or permitted unless approved by the Association and the plans approved by the DRC. No tanks for the storage of liquified petroleum gas, fuel oil, gasoline, oil, chemicals or toxic substances shall be placed or maintained on any Lot. Tanks and cisterns for water may be buried, but the plans therefore shall be approved by the DRC.

9.9 Individual Swimming Pools Prohibited. The construction, installation or maintenance of private swimming pools on the Lots is prohibited.

9.10 Towers and Windmills.

9.10.1 No tower, derrick or other Structure designed for use in boring for oil or natural gas, and no radio or television transmission towers shall be erected, placed or permitted on a Lot; and the production or extraction of oil, natural gas, petroleum, asphalt or hydrocarbon products or substances shall not be permitted.

9.10.2 No windmills or wind-driven machinery shall be permitted within the Subdivision unless the Association determines that there are some such devices which are quiet, not a nuisance, and which do not pose a threat to birdlife and unless the DRC approves plans for the same after

determining that their installation will not have a substantially adverse impact on other Lots.

9.11 **Size of House and All Structures.** Minimum size: No residence on a Lot shall be less than six hundred (600) square feet of interior heated space. Maximum size: No Structures may be built or maintained on a Lot in excess of the following maximum size: the total combined square footage of all Structures on the Lot (including, but not limited to, interior heated and unheated space of the Residence plus the heated and unheated areas of all other Structures on the Lot, inclusive of garages, studios, and guesthouses, if any, but exclusive of portals, porches, exterior entryways, walkways, patios and exterior courtyards and gardens) shall not exceed three thousand three hundred (3,300) square feet.

9.12 **Construction of Studio.** Except as stated below, no construction of a studio attached in the manner described in §8.4.2 shall commence until construction of the principal Residence has begun. If the Owner plans to construct a studio and to use the studio in lieu of a construction trailer or for the storage of tools and materials, the Owner may begin the construction of the studio before the Residence is begun and proceed to close it in so it may be used for those purposes. In any case the Residence must be completed before any such studio is completed.

9.13 **Motor-Driven Vehicles.** No mini-bikes, motorcycles, or off-road vehicles shall be driven or permitted on or off of any roadway except for ingress and egress to an Owner's Lot or residence. No motor-driven vehicle shall be driven or permitted in the Subdivision except on the roadways or the driveways within the Subdivision. Notwithstanding the above, electric assisted bicycles, and electric or motorized wheelchairs or similar assisted vehicles are permitted both on the roadways and on the pathways.

9.14 **Surface or Ground Water.** Surface or ground water shall not be impounded by any Owner in any way contrary to the Town Development Code or New Mexico law.

Article 10 Design Review Committee

10.1 **Design Review Committee.** A Design Review Committee or DRC for the Subdivision is hereby established. The DRC shall consist of not less than three (3) nor more than five (5) Qualified Persons, the number to be determined by the Board. The members of the DRC shall be elected by the Members of the Association. However, if required by a lender, title company or legal entity, then the members of the DRC representing a majority vote thereof shall be appointed by the Declarant and the remainder shall be elected by the Class A Members. The terms of each DRC member, removal of a DRC member or filling of vacancies shall be governed by the Bylaws. The affirmative vote of a majority of the members of the DRC shall be required for approval of any matter. A majority of the members of the DRC may designate one (1) member to act on behalf of the DRC.

10.2 **Compensation.** Unless authorized by the Board, the members of the DRC shall not receive any compensation for services rendered or expenses. All members shall be entitled to

reimbursement as approved by the Board for reasonable expenses incurred by them in connection with the performance of any DRC function or duty.

10.3 Qualified Design Services. The DRC may require an Owner to retain qualified design services after the rejection of two consecutive submittals before any additional submittals will be reviewed. Such services shall be an individual or company that has demonstrated competency in site analysis, planning, technical knowledge and communication in an environment with similar opportunities and constraints as are customary to the Property. An individual deemed qualified shall also show a complete understanding for this Declaration and the desire to abide by it.

10.4 Professional Services. The DRC may consult or engage the services of qualified professionals (including, without limitation, architects, designers, engineers, surveyors and any others the DRC deems necessary) in relation to any design or plan submitted by an Owner. These professional consultants retained by the DRC shall be paid such compensation as the DRC determines. The Owner shall reimburse the Association for such services and expenses within ten (10) days following notice by the DRC to the Owner of such charges. Such charges and expenses shall be deemed a Special Expense charged against an Owner as provided in §13.7.

10.5 Pre-Design Site Meeting. Prior to preparing preliminary plans for any proposed Improvement, it is mandatory that the Owner, the Owner's architect, Builder or other representative meet with the DRC or member thereof to discuss proposed plans, and to explore and resolve any questions regarding building requirements for the Lot. This review will also develop a relationship and open communications channels between the DRC and the Owner prior to initiating preliminary design. An appointment for a pre-design site meeting should be made in advance.

10.6 Design Review Fees; Construction Deposit.

10.6.1 At the pre-design site meeting, a Design Review Fee in the form of a check made payable to the Association must be delivered. For a period of one (1) year following recordation of this Declaration and for initial construction, the Design Review Fee will be One Hundred Dollars (\$100.00) per Development Plan application. Thereafter, the Design Review Fee shall be in an amount determined by the Board, but in no event less than One Hundred Dollars (\$100.00) per Development Plan application.

10.6.2 In the case of an addition to an existing home, and for a period of two (2) years after recordation of this Declaration, the Design Review Fee will be One Hundred Dollars (\$100.00). Thereafter, the Design Review Fee shall be in an amount determined by the DRC, but in no event less than One Hundred Dollars (\$100.00).

10.6.3 For a period of one (1) year following recordation of this Declaration and prior to the commencement of any construction by an Owner, the Owner shall pay, and the Association shall collect and retain, a Construction Deposit in the amount of not less than Five Thousand Dollar (\$5,000.00) as security for the Owner's and Builder's compliance with the terms of this Declaration during construction and for damages to the Common Property and other Lots during construction.

Thereafter, the Construction Deposit shall be in an amount determined by the DRC, but in no event less than Five Thousand Dollars (\$5,000.00). Should the Association apply any portion of the Construction Deposit to repair damage to the Common Property and other Lots, the Owner shall replenish the Construction Deposit so that the amount of the Construction Deposit *is restored to the original amount. Any damages or expenses incurred by the Association due to the activities of the Owner or the Builder shall be deemed a Special Expense charged against an Owner as provided in §13.7. The priority of payment from the deposit to pay for damages shall be first the Common Property and then, if sufficient funds remain, the other Lots.

10.6.4 The remaining balance of the Construction Deposit will be refunded in whole or in part upon completion of construction, minus any related expenditures by the Association or DRC and any costs related to repairs to the Common Property and other Lots required due to any damages by construction vehicles or other causes or actions of the Owner or Builder.

10.7 **Notice of Submittal.** Concurrently with submission of the complete plans, the Owner will send to the Owners of adjacent Lots written notice of the submittal. Such notice shall be sent via postage prepaid and also certified mail, return receipt requested at the address of the adjoining Owners as reflected in the records of the Association. In lieu of the foregoing manner of notice, notice may be given electronically if the adjoining Owner has notified the Association that said Owner will consent to written notice being delivered electronically. Development Plans may be inspected by adjoining Lot Owners, and written comments will be received by the DRC prior to the time the DRC begins its preliminary review of the proposed Improvements. The DRC will then consider the submittal.

10.8 **Development Plan and Design Approval.** Prior to the commencement of any construction or alteration on a Lot, the Owner shall stake the location of all Structures, walls, trees and shrubs which could grow to twelve feet (12') or more in height, driveway and parking area(s) and shall submit and obtain written approval for a Development Plan from the DRC. The Development Plan shall include a complete set of plans (with three copies) which shall include:

10.8.1 a site plan showing the location of all existing and proposed drainage, proposed grinder pumps and other utilities, Structures, driveways, lighting, landscaped or otherwise improved areas on a topographical map (stamped by an licensed professional surveyor) with contour intervals at a maximum of one foot (1') and at a scale acceptable to the DRC ;

10.8.2 a complete plan to scale for all Structures including without limitation the exterior detail elevations showing windows, doors, solar devices, areas and colors of stucco, and describing building materials, insulation, and all other energy conservation and renewable energy utilization features;

10.8.3 a floor plan for the Structures including the number of heated interior square feet and the total number of square feet of all Structures combined, as set forth in § 9.11;

10.8.4 a detailed drainage and terrain management, including provisions for irrigation, and

a plan showing any trees or shrubs which could grow to twelve feet (12') or more in height;

10.8.5 a plan for location of all other Improvements on the Property; and

10.8.6 the Lot number, street address and mailing address for such Owner.

10.9 Revisions to Development Plan and Design. No change in approved plans (including without limitation plans for elevations of Structures, location of Structures, height of Structures, driveways, parking areas, drainage, terrain management, and exterior color scheme and roof treatment, but excluding plans for the interiors of Structures which changes do not affect the exterior of a Structure) shall be permitted unless such change has been approved by the DRC.

10.10 Waiver; Variances. An Owner may apply to the DRC for a waiver or variance of the requirements of this Declaration and its restrictions, and the DRC, in its sole discretion, shall have the right to waive such restriction or enforce the same as it deems appropriate.

10.11 DRC Review.

10.11.1 The DRC shall proceed in good faith and in accordance with the terms and provisions of this Declaration to review the submittal by an Owner. The DRC, in its sole discretion, shall approve, conditionally approve or disapprove such submittal within sixty (60) days of receipt of the complete set of drawings or plans required by these covenants.

10.11.2 The DRC and its members shall act in good faith hereunder for the general benefit of the Owners. As used in the foregoing sentence, general benefit of the Owners does not mean that each and every Owner must benefit by a decision of the DRC. Subject to the duty to act in good faith, neither Declarant, the Board of Directors of the Association, any DRC member nor the DRC or its employees or agents shall be liable for any damage, loss or prejudice suffered or claimed by any Person on account of:

10.11.2.1 the approval, conditional approval, or disapproval of any plans or specifications, whether or not defective;

10.11.2.2 the sufficiency of architectural and engineering plans for any improvement to any Lot; or

10.11.2.3 the construction of any improvement or performance of any work on any Lot, whether or not done pursuant to approved plans or specifications.

10.12 Time for Construction.

10.12.1 Construction of any Structure or Improvement shall begin within one hundred twenty (120) days of final approval of a Development Plan by the DRC and shall be continuous and proceed in an orderly fashion without interruptions. Any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed the Construction Deadline Period.

10.12.2 The foundation for any Structure or Improvement shall be completed as soon as is practically possible after the commencement of construction.

10.12.3 Commencement of construction shall mean the first onsite work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of installing the foundation.

10.12.4 Material and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots or the Common Property.

10.12.5 A single temporary construction trailer or shed and a single trash bin may be located on the Lot during the Construction Deadline Period, with approval of the DRC.

10.12.6 If construction is not completed within the Construction Deadline Period, the Lot Owner shall be subject to a penalty in the form of a Special Expense levied by the DRC. For a period of one (1) year following recordation of this Declaration the Special Expense shall be in the amount of One Hundred Dollars (\$100.00) for the first month or part thereof after expiration of the Construction Deadline Period, and thereafter the sum of Three Hundred Dollars (\$200.00) for the second month or part thereof after expiration of the Construction Deadline Period, and thereafter the sum of Five Hundred Dollars (\$500.00) for the third month or part thereof after expiration of the Construction Deadline Period. Thereafter, the Special Expense shall be in an amount determined by the DRC, but in no event less than One Hundred Dollars (\$100.00) for each day the construction period extends past the third (3d) month following expiration of the Construction Deadline Period. Such penalty shall be a lien on such Lot in accordance with §13.9. The rate of this Special Expense may be adjusted upon recommendation of the DRC, with the consent of a majority of the Board.

Article 11 Construction Regulations; Lots

11.1 **Regulations.** In order to assure that the natural landscape of each Lot is not unnecessarily damaged during any construction activities and that the quiet enjoyment of other Owners is not substantially impaired during any construction activities, the following construction regulations shall be enforced from the time any site work begins on the Lot until such time as the Design Review Committee grants final approval on the completed residence. These regulations shall be made a part of the construction contract document specifications for each residence or other Improvements on a Lot and all Builders and Owners shall be bound by these regulations. Any violation by a Builder, subcontractor or anyone else on the site shall be deemed to be a violation by the Owner of the Lot.

11.2 **Inspections.** Inspections of building sites during construction may be conducted by DRC Members or members of the Board, each of whom may enter the construction site at any reasonable time for such purpose. Violations of construction regulations shall be reported to the Board and the DRC who shall notify the Owner and Builder of the nature of the violation.

11.3 **Continued Violations.** Continued violation of these policies and procedures may result in

the general contractor and the subcontractors being denied access to the Subdivision by the Association, the DRC, the Declarant or its agents.

11.4 Pre-Construction Conference. Prior to commencing construction, the Builder must meet with the DRC Architectural Representative to review construction procedures and coordinate the Builder's activities in the Subdivision. At the pre-construction conference, the Builder must provide the following:

11.4.1 A construction schedule;

11.4.2 The Construction Area Plan described in §11.5;

11.4.3 A drawing of the proposed construction sign, if any; and

11.4.4 Any other items as may be requested by the DRC.

11.5 Construction Area Plan. At the pre-construction conference and prior to the commencement of any construction activity on a Lot, the Owner and Builder shall provide a detailed plan as to the manner in which the natural landscape will be protected, and the areas within which all construction activity will be confined, including, but not limited to: size and location for construction material storage, limits of excavation, drive areas, parking, chemical toilet location, temporary Structures, if any, dumpsters, storage of debris, fire extinguisher, utility trenching, and construction sign. This Construction Area Plan should identify the methods for protection, such as fencing, flagging, rope, barricades or other means, to be set up prior to commencement of construction, any of which may be required at the discretion of the DRC.

11.6 Occupational Safety and Health Act Compliance (OSHA). All applicable OSHA regulations and guidelines must be strictly observed at all times.

11.7 Construction Trailers, Portable Field Offices, Etc. Any Owner or Builder who desires to bring a construction trailer, field office or the like to the Subdivision shall first apply for and obtain written approval from the DRC at the time of the pre-construction conference. Such temporary Structures shall be located only in a location approved by the DRC and shall be removed upon completion of construction or at any such time that construction discontinues for a period of more than 60 days.

11.8 Debris and Trash Removal.

11.8.1 Owners and Builders shall clean up all trash and debris on the construction site at least once a week to a dumping site located outside the Subdivision. Lightweight material, packaging, and other items, shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and Builders are prohibited from dumping, burying, or burning trash anywhere on a Lot or in the Subdivision. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from being a public eyesore, or affecting other Lots or the Common Property. Any clean-up costs incurred by the DRC

or the Association in enforcing these requirements will be deducted from the Construction Deposit or billed to the Owner. Dirt, mud or debris resulting from activity on each construction site shall be promptly removed from the Common Property and driveways or other portions of the Subdivision.

11.8.2 On each construction site, the Builder must designate a wash out area within the Building Envelope for contractors and suppliers to clean their equipment. The cleaning of equipment must occur, and cleaning effluent must remain, within that specified area. Equipment cleaned in any area other than the designated area will result in the DRC imposing a fine or retaining the Construction Deposit to repair any damage resulting from such equipment cleaning in improper areas.

11.9 **Sanitary Facilities.** Each Owner and Builder shall be responsible for providing adequate sanitary facilities for the Builder's construction workers. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the DRC and shall be maintained and pumped as is necessary to eliminate odors and other nuisances..

11.10 **Vehicles and Parking Areas.** Construction crews will not park on, or otherwise use, other Lots for parking. Private and construction vehicles and machinery shall be parked only in areas designated by the DRC. All vehicles will be parked so as not to inhibit traffic, and within the designated areas so as not to damage the natural landscape.

11.11 **Excavation Materials.** Excess excavation material, if any, must be hauled away from the Subdivision, except that the DRC may designate areas where clean topsoil may be deposited and if the DRC does so, then clean topsoil may be deposited in those areas.

11.12 **Restoration or Repair of Other Property Damaged.** Damage or scarring to the Common Property or to any other Lot or other Improvements is prohibited. If any such damage occurs, the Owner of the Lot shall be obligated to ensure that it is repaired and/or restored promptly at the expense of the Person causing the damage or the Owner of the Lot. Upon completion of construction or discontinuance of construction, each Owner and Builder shall clean the construction site and repair all property which was damaged, including but not limited to restoring grades, planting shrubs and trees as approved or required by the DRC, and repair of streets, driveways, pathways, landscaping, drains, culverts, ditches, signs, lighting and fencing.

11.13 **Miscellaneous and General Practices.** All Owners shall be absolutely responsible for the conduct and behavior of their agents, representatives, Builders, contractors and subcontractors on the Subdivision. The following practices are prohibited, unless with the prior approval from the DRC :

11.13.1 Changing oil on any vehicle or equipment.

11.13.2 Concrete suppliers and contractors are prohibited from dumping concrete or cleaning their equipment other than at locations, if any, designated for that purpose by the DRC.

11.13.3 Removing any topsoil from Lot, unless it is relocated to a place within the Subdivision designated by the DRC.

11.13.4 Using disposal methods or units other than those approved by the DRC.

11.13.5 Careless disposition of cigarettes and other flammable material. At least one 10 pound ABC rated dry chemical fire extinguisher shall be present and available in a conspicuous place on the construction site at all times.

11.13.6 Careless treatment or removal of plant materials not previously approved by the DRC.

11.13.7 Pets of Builders, their contractors and subcontractors, particularly dogs, shall not be brought onto the Lot. No pets will be allowed to roam at will*in the Subdivision. In the event of any violation hereof, the DRC, the Board or Declarant shall have the right to contact the appropriate authorities to impound the pets, or to refuse to permit such Builder or subcontractor to continue work on the Lot, or to take such other action as may be permitted by law or Rules and Regulations.

11.14 **Dust and Noise.** The Builder shall be responsible for minimizing dust and noise from the construction site. Regular working hours between 7:00 am and 6:00 p.m. shall be established and observed. Outdoor music or other amplified sound shall not be permitted at the construction site or within the Subdivision.

11.15 **Temporary Construction Signs.** Temporary construction signs shall be limited to one unlit sign per site not *to exceed six square feet of total surface area located within the Lot upon which construction activities occur. The sign shall be free standing and the design and location of such a sign shall first be approved by the DRC. The DRC will require all construction signs to meet the following criteria:

11.15.1 Signs shall be single-faced, panel type and no additional sign may be attached to any construction sign by fastening directly to the main sign or by suspension below it.

11.15.2 Only the following information may appear on a construction sign: Builder's name and phone number, architect's name and phone number, Owner's name.

11.15.3 Information such as “for sale”, “available” or similar language, or descriptive phrases such as “3-bedroom” may not appear on any construction sign.

11.15.4 Construction signs must be removed at the time the house is substantially completed or when the DRC directs the sign to be removed.

Article 12

The Association; Membership; Voting Rights; Declarant Control

12.1 **The Association.** The Association shall be responsible for the management, operation, and control of the Common Property. Members of the Association shall consist of all record Owners. The powers and duties of members, and powers and duties of the Association are specified in the Articles and Bylaws and as supplemented herein.

12.2 **Classes of Membership.** There shall be two (2) classes of membership in the Association: Class A and Class B. The Class A members shall be all Owners of Lots, excluding the Declarant (but not excluding members of the Declarant who individually own a Lot). The sole Class B Member shall be the Declarant, so long as Declarant is an Owner of a Lot. Class A Members shall have one (1) equal vote for each Lot in which the member holds an interest, however, there shall be only one (1) vote per Lot. The Class B Member shall hold two (2) votes per Lot for each Lot owned by the Class B Member. If Declarant deems in its sole discretion that the decision on a pending issue will not affect the marketability of its unsold Lots, the Declarant may elect to exercise only one vote per Lot (instead of the usual two votes per Lot) in relation to that issue.

12.3 **Class B Membership; Declarant Control Period.** During the Declarant Control Period, the Class B Member shall have the right to appoint the number of members 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 members.

12.4 **Termination of Declarant Control Period.** The Declarant Control Period shall terminate upon the earlier of:

12.4.1 eighty percent (80%) of the total number of Lots have been conveyed to Persons not affiliated with Declarant; or

12.4.2 six (6) years after the date of recordation of this Declaration in the land records of Taos County, New Mexico; or

12.4.3 when, in its discretion, the Declarant relinquishes its rights during the Declarant Control Period, as evidenced by a written notice filed for record in the land records of Taos County, New Mexico.

12.5 **Termination of Right to Appoint Members.** The Declarant's right to appoint members of the Board shall cease upon termination of the Declarant Control Period. When all Lots have been sold by Declarant, any remaining members of the Board who were appointed by the Declarant but whose term has not yet expired shall resign and the vacancies of the Board shall be filled by election by the Class A members.

12.6 **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.

12.7 Board of Directors. The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration and the Articles and Bylaws for the Association. The Board shall, from time to time, make, establish, promulgate, amend, and repeal the Subdivision Rules. The Members of the Association may reject any rule or regulation promulgated by the Board or any budget proposed by the Board. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Mortgagee upon request. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of this Declaration and the Subdivision Rules.

12.8 Rules and Regulations or Subdivision Rules.

12.8.1 Subject to the right of the Members of the Association to reject the same, the Board shall, from time to time, make, establish, promulgate, amend, and repeal the Rules and Regulations or Subdivision Rules and the DRC rules which shall govern the conduct of Persons within the Subdivision but which rules shall not prohibit any activity which is allowed by this Declaration and shall not unreasonably restrict the use and enjoyment of the Owners of their Lots and the Common Property.

12.8.2 The Board may delegate to the DRC the authority to adopt DRC Rules establishing its procedures and requirements needed to carry out its functions and to collect, on behalf of the Association, the fees and charges authorized by this Declaration, subject to the right of the Members at a meeting called for that purpose to reject such Rules regarding procedures and requirements.

12.9 Enforcement Power. The Association has the power and duty to take such action as may reasonably necessary to enforce or carry out the purposes of this Declaration and the rules adopted by the Association.

**Article 13
Assessments**

13.1 Mutual Covenants to Pay Assessments. Each Lot Owner, by acceptance of a deed to a Lot, covenants and agrees with each other Owner, the Declarant and with the Association, to pay all Assessments levied by the Board, as required in this Declaration, whether or not such covenant is contained in such deed.

13.2 Allocated Shares for Assessments. Each Lot shall be allocated 1 share or 1/28 or 3.57 percent for Common Expenses, excluding Common Buildings Expenses. Current Common Buildings Expenses shall be allocated equally for all Lots improved with a completed Residence for Common Buildings Expenses Reserves for future Common Buildings Expenses related to repair or

replacement of the Common Buildings may be allocated in the same manner as current Common Buildings Expenses or may be divided equally among the Lots, as the Board and the Members may decide.

13.3 Common Expense Fund; Initial Capital Payment.

13.3.1 The Board shall establish a Common Expense Fund to enable the Association and the Board to perform its administrative duties and exercise the powers and perform the rights, obligations and duties stated herein. Such fund shall be funded by Assessments.

13.3.2 The Declarant, as the agent of the Board, will collect from each initial purchaser at the time of acquisition of a Lot from the Declarant, an Initial Capital Payment equivalent to Five Hundred Dollars (\$500.00). The Declarant will deliver the funds so collected to the Board to provide the necessary working capital for the Association. Such payment is not an Assessment and shall not be credited against any Owner's obligation for Assessments.

13.4 **Declarant's Obligation for Assessments.** Until all Lots are sold, Declarant, in its sole option, may annually elect to either pay regular Assessments on unsold Lots or to pay the difference between the amount of Assessments collected on all other Lots subject to Assessment and the amount of the actual expenditures by the Association during the fiscal year. Unless the Declarant notifies the Board, in writing, at least sixty (60) days before the beginning of the fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as the immediately preceding year. The Association shall have a lien against all Lots owned by the Declarant to secure payment of the Declarant's obligations hereunder under the same terms and conditions as the Association's lien against any Lot. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by any combination of these.

13.5 **Annual Budget.** Annually the Board shall prepare and adopt a proposed estimate of the total amount it deems necessary for the Association's next fiscal year to pay the Common Expenses of the Association. The annual budget shall be prepared as provided in the Bylaws. The annual budget shall be provided to the Members prior to the annual meeting and shall be voted upon by the Members at that meeting, all in accordance with the Bylaws..

13.6 **Assessments.** Effective the first day of the month after the first annual budget is adopted by the Association, each Owner, excepting the Declarant, shall be assessed a sum equal to each Owner's Common Expenses Liability. Such sum shall be paid by the Owner in such installments as determined by the Board under the Bylaws.

13.6.1 Contributions for Assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of a fiscal year. The omission or failure of the managing agent or the Board to fix the Assessment for any fiscal year shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay the Assessment for that period.

13.6.2 If the amount of the annual budget proves inadequate for any reason including, without limitation, non-payment of any Owner's Assessment, the Board may at any time levy a

further Assessment by increasing the annual budget and each Owner shall be assessed a sum equal to the each Owner's Common Expense Liability; provided, however, extraordinary expenses omitted from the annual budget, which may become due during the fiscal year, shall first be paid from the replacement and contingency reserve; and provided further, if inadequate funds exist during a fiscal year, the Association may borrow sufficient funds from Declarant or otherwise. Declarant shall not be obligated to loan any funds to the Association. The Board shall give written notice of any such increase, and the reasons therefor, to each Owner, and shall state the date and terms of payment of such increase.

13.6.3 All such Assessments collected shall be paid and expended for the purposes authorized herein, and (except for such Special Expenses as may be levied against less than all the Owners and for such adjustments as may be required to reflect delinquent or unpaid Assessments) shall be deemed to be held for the benefit, use and account of all Owners in the same percentages as their percentage ownership of the total Subdivision. Notwithstanding any other provision contained herein, no Owner shall have the right to demand that more than the Owner's pro rata share of the Assessments collected be used to benefit the Owner's Lot.

13.7 Special Allocations of Common Expenses; Special Expenses. The Board may adjust or revise the allocations of Common Expenses for the Lots, as provided or described in the Bylaws and as follows:

13.7.1 Common Expenses benefitting fewer than all Lots or benefitting individual Owners may be assessed in proportion to usage.

13.7.2 The cost of insurance may be assessed in proportion to risk.

13.7.3 An Assessment to pay a judgment against the Association may be made only against the Lots at the time the judgment was entered, in proportion to the Common Expense liabilities appurtenant to a Lot.

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

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

13.7.6 In the event any of the Easements or Common Property, signage, landscaping, or Association property are damaged in any way through the intentional or negligent act or omission of any Owner or an Owner's agents, contractors, materialmen, laborers, employees, or invitees, the expense incurred by the Association for the repair of such damage shall be deemed a Special Expense. Such Special Expenses shall be levied by the Board and assessed only to the Owner whose act or omission resulted in such damage, and shall be paid by the Owner together with the Owner's next annual Assessment due the Association.

13.8 Books of Account. The Board shall maintain current, detailed books of account in

accordance with the standards set forth in the Bylaws. Such books, records, purchase orders and payment vouchers shall be available for inspection by any Owner, or any duly authorized representative of any Owner, at reasonable times during normal weekday business hours. Any Owner's Mortgagee shall be deemed an authorized representative of Owner. Upon ten (10) business days' notice to the Board and payment of a reasonable fee established by the Board, any Owner or Mortgagee may demand and be furnished a statement of an Owner's account reflecting the amount of any unpaid Assessments or other charges due and owing from such Owner.

13.9 Lien for Non-Payment of Common Expenses or Special Expenses. All sums assessed and fines imposed by the Association, but unpaid, for the share of Common Expenses, including, without limitation, any Assessment for Special Expenses or any other charge authorized by this Declaration or the Bylaws or for violations of this Declaration, the Bylaws, Subdivision Rules or DRC Rules, and chargeable to any Lot Owner, shall constitute a lien on such Lot having a priority as of the date of recording of this Declaration.

13.9.1 If any Assessment (or any other amount owing under the terms of this Declaration) shall remain unpaid for thirty (30) days after the due date thereof, the board or managing agent shall assess interest thereon at a rate determined by the Board equal to not less than twelve percent (12%) per annum nor greater than eighteen (18%) per annum, commencing on the date such Assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof.

13.9.2 In any foreclosure of such lien by judicial action, the Owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorneys fees.

13.9.3 The Owner shall also be required to pay to the Association any Assessment due for the Lot during the period of foreclosure. The Declarant, managing agent or Board shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

13.9.4 Any Mortgagee may pay, but shall not be required to pay, any unpaid Common Expenses or Special Expenses due with respect to such Lot, and upon such payment such Mortgagee shall have a lien on such Lot of the same rank as the lien of the Mortgagee's encumbrance for the amounts paid.

13.9.5 The Association shall give notice to the Lot Owner and the Mortgagee of a Lot of any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

13.10 Personal Debt of Owner. The amount of the Common Expenses or Special Expenses assessed against each Lot shall be the Personal and individual debt of the Owner thereof at the time the Assessment is made. Suit to recover a money judgment for unpaid Common Expenses or Special Expenses, plus costs and reasonable attorneys fees, shall be maintainable without foreclosing or waiving the lien securing same.

13.11 Statement of Unpaid Expenses. Upon receipt of a written request, the Board shall promptly provide any Owner, contract purchaser or holder of a mortgage, identified in the written request, a written statement of all unpaid charges and anticipated charges due from an Owner. Such statement shall be furnished within ten (10) business days after receipt of the request and the Owner of the Lot identified in the statement shall not be liable for, nor shall the Lot be subject to a lien for, any unpaid Assessments in excess of the amount therein set forth by the Board. The Association shall be entitled to charge a reasonable fee for the preparation of statements of unpaid Assessments.

13.12 Joint Liability; Transfer of Lot. The grantee of a Lot shall be jointly and severally liable with the prior Owner for all unpaid Assessments against the latter for the Owner's proportionate share of the Common and/or Special Expenses up to the time of the grant or conveyance; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the managing agent or Board setting forth the amount of the unpaid Assessments, if any, with respect to the subject Lot, the amount of the current annual Assessment, the date that such Assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within twenty (20) business days of its actual receipt of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed by subject to a lien for any unpaid Assessments against the subject Lot unless such lien has been recorded with the Taos County Clerk prior to the date the request is received by the Association.

13.13 Transfer Fee. Upon the closing of the sale of a Lot following the initial sale of the Lot by the Declarant, the purchasers of the Lot shall pay a Transfer Fee to the Association, which shall be established initially at One Hundred Dollars (\$100.00) per Lot. The amount of this Transfer Fee may be adjusted from time to time by the Association. This fee shall not apply to sales by the Declarant to the initial purchaser.

13.14 No Waiver of Common Expenses or Special Expenses. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Easements or the Owner's Lot, by abandonment of the Owner's Lot or by any other means whatsoever.

13.15 Subordination of Assessment Lien. The lien of the Assessments provided for herein shall be subordinate to the lien of a Mortgagee. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due, or from the lien thereof.

Article 14 Amendment

14.1 By Declarant. Until termination of the Declarant Control Period, Declarant may unilaterally amend this Declaration 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.

14.2 By Owners; Consent of Declarant During Control Period.

14.2.1 During the Declarant Control Period, and except as stated above, this Declaration 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 to this Declaration by the Owners shall be effective unless approved by the Declarant, as evidenced by Declarant's written approval on such amendment.

14.2.2 After expiration of the Declarant Control Period, this Declaration 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 and Class B votes which have been voted in relation to the proposed amendment.

14.2.3 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.

14.3 Validity and Effective Date of Amendments. Amendments to this Declaration shall be effective upon recordation in the office of the County Clerk of Taos County, New Mexico, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) 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 provision of this Declaration. If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority so 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. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Article 15 General Provisions

15.1 Enforcement. The Board, Declarant and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so

thereafter. If an Owner or the Association prevails in any action against any Person or Persons to enforce any provision hereof, the Owner or Association shall be entitled to recover from such Person or Persons all costs and reasonable attorneys fees.

15.2 **Notices.** Any notices required or permitted to be delivered hereunder 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 an Owner, at the address which the Owner shall designate in writing and file with the Board 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 DRC at the office of the Association or at such other address as shall be designated by notice in writing to the Owners.

15.2.1 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.

15.2.2 Other than the notices described in §15.2.1 the Association may provide notice to the Owners or other communications under this Declaration, through facsimile or e-mail messages or in its regularly published newsletter, if any, 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 Board shall be entitled to receive all notices hereunder.

15.3 **Captions; Gender.** 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 this Declaration or the intent of any provision thereof. The use of the masculine gender in this Declaration shall be deemed to include the feminine and neutral genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

15.4 **Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.5 **Binding Effect.** This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Owners, and their respective heirs, successors and assigns and shall run with the land.

Valverde Commons, LLC,
New Mexico limited liability company

Date: _____

By: _____
Stephen J. Rose, Managing Member

Date: _____

By: _____
Robert M. Draper, Managing Member

