

RESTATED BY-LAWS

of

DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION

ARTICLE

I.

Introductory Provisions

1.1. **Applicability.** These By-Laws provide for the governance of DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION, a New Mexico nonprofit corporation (herein "the Association"), with respect to DESERT RIDGE TRAILS SUBDIVISION, UNIT I, a planned residential community located in the City of Albuquerque, County of Bernalillo, State of New Mexico, created by the recording of the Declaration to which these By-laws pertain ("Declaration") in the office of the County Clerk of Bernalillo County, New Mexico, on February ____, 2002, as Document No. ____, in Book ____, at pages ____ ("Subdivision"), and with respect to all other real properties which may become subject to the Declaration as provided in Article II thereof.

1.2. Definitions.

1.2.1. Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration.

1.2.2. The following terms when used herein shall have the meanings set forth below:

a. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

b. "Association" shall mean and refer to DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION, a New Mexico nonprofit corporation, and its successors and assigns.

c. "Board" shall mean and refer to the Board of Directors of the Association.

d. "By-Laws" shall mean and refer to the By-Laws of the Association.

e. "Common Expenses" shall mean and refer to all expenses and obligations of the Association, including allotments to any reserve fund.

f. "Common Facilities" shall mean and refer to those areas and facilities of the Subdivision (defined below) which are for the common use and enjoyment of the Owners (defined below). The Common Facilities shall include, without limitation, the Perimeter Wall (defined below), Subdivision signs, Tracts for use as bicycle and pedestrian

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trails (Tracts AA and BB), a landscape irrigation system within the Tracts, landscaping, including the irrigation thereof, between the Park and the adjoining curbs and gutters, and any and all other community facilities, which currently are within, or may in the future be erected within, the Subdivision, and shall include those areas and facilities designated as "Common Facilities" in this Declaration and in any Supplemental Declaration. The Common Facilities shall not include the Park, street lights, street lighting system, streets, curbs, gutters, and other public facilities which shall be owned by or dedicated to the City of Albuquerque or to the Albuquerque Metropolitan Arroyo Flood Control Authority ("Public Facilities"); however, the maintenance of the landscaping, including the irrigation thereof, between the Park and the adjoining curbs and gutters shall be the responsibility of the Association; the maintenance of the landscape areas within the public rights-of-way on the following streets as shown on the approved Site Development/Utility Plan for the Subdivision shall be the responsibility of the Association:

Blue Cypress Avenue NE
Canyon Sage Drive NE
Prairie Vista Drive NE
Wild Olive Avenue NE; and

g. "Declarant" shall mean and refer to MESA VERDE DEVELOPMENT CORPORATION, a New Mexico corporation, its successors and assigns in interest.

h. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for DESERT RIDGE TRAILS SUBDIVISION, UNIT I, an addition to the City of Albuquerque, New Mexico, To Run With the Land, including its exhibits, as the same may be amended from time to time, and shall include any Supplemental Declaration.

i. "Dwelling Unit" shall mean and refer to any structure, or part thereof, situated upon a Lot (defined below) within the Subdivision that is designed and intended for residential use by a single family. Where appropriate, any use herein of the term "Dwelling Unit" shall include the Lot upon which the Dwelling Unit is placed.

j. "Lot" shall mean and refer to any separately numbered or lettered plot of land shown upon any recorded plat or map of the Subdivision, as amended from time to time, excluding the Common Facilities and the Public Facilities. Where appropriate, any use herein of the term "Lot" shall include any Dwelling Unit placed thereon.

k. "Members" shall mean and refer to all members of the Association, and the term "Member" shall mean and refer to any one of the Members.

l. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot, but shall not mean or refer to any person or entity who or which holds title merely as security for the performance of an obligation. However, "Owner" shall include a record owner of the fee-simple title to any Lot who or which acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.

m. "Park" shall mean and refer to the area designated as "Park" on the Plat (Tract "B" as shown and designated on the Plat), which Declarant conveyed to the

City of Albuquerque, New Mexico, which is owned by the City as a Public Facility, and which Park and Park Improvements shall be maintained by the City of Albuquerque.

n. "Perimeter Wall" shall mean and refer to the perimeter wall along the perimeter boundary of the Subdivision which Subdivision boundary is shown on the Plat and which Perimeter Wall shall be maintained as set forth in Article VI, Section 26, of the Declaration. The Perimeter Wall is a Common Facility.

o. "Plat" shall mean and refer to the Plat of DESERT RIDGE TRAILS SUBDIVISION, UNIT I, which was filed on February 8, 2002, as Document No. 2002017575, and recorded in Vol. 2002C, at page 46 of the records of Bernalillo County, New Mexico.

p. "Public Facilities" shall mean and refer to the Park, street lights, street lighting system, streets, curbs, gutters, and other public facilities owned by or dedicated to the City of Albuquerque or to the Albuquerque Metropolitan Arroyo Flood Control Authority.

q. "Rules and Regulations" shall mean and refer to any and all rules, regulations, and design standards adopted and/or amended by the Board from time to time in the manner permitted by these By-Laws. A copy of the Rules and Regulations is contained in the Desert Ridge Trails Homeowners Association Resident Handbook.

r. "Subdivision" shall mean and refer to the DESERT RIDGE TRAILS SUBDIVISION, which includes the Existing Property, as defined in Article II of the Declaration, and any and all additions thereto.

s. "Supplemental Declaration" shall mean and refer to any instrument which amends, modifies, or terminates the Declaration, or which accomplishes some action taken under the Declaration, and which has been executed and acknowledged in the manner required by the Declaration, and recorded in the office of the County Clerk of Bernalillo County, New Mexico, and shall be included in the term "Declaration," unless the context shall prohibit such construction.

1.3. **Compliance.** Every Owner and all persons entitled to occupy a Lot or Dwelling Unit shall comply with these By-Laws.

1.4. **Office.** The principal office of the Subdivision, the Association, and the Board shall be located at such place as may be designated from time to time by the Board.

ARTICLE II.

The Association and its Members

2.1. **Composition.** The Association will be organized as a nonprofit corporation upon the filing of the Articles and these By-Laws with the New Mexico State Public Regulation Commission as provided by law. The Association shall consist of all of the

Owners acting as a group pursuant to the Declaration and these By-Laws. The Association shall have the responsibility of administering and managing the Subdivision, establishing the means and methods of collecting assessments, and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Declaration and Articles. The foregoing responsibilities shall be performed by the Board or its Managing Agent as more particularly set forth in these By-Laws.

2.2. **Membership.** Every person or entity who or which is a record Owner of a fee-simple interest in any Lot which is subject by the terms of the Declaration to assessment by the Association shall be a Member of the Association, including, without limitation, any record Owner of a fee-simple interest in any Lot who or which acquired such title at a judicial sale or by a conveyance in lieu of foreclosure. However, any person or entity who or which holds such an interest merely as security for the performance of an obligation shall not be a Member. The rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities, may be suspended by the Board for any period during which the following-described delinquency or delinquencies shall continue upon written notice to any Lot Owner who: (i) fails, neglects, or refuses to pay any assessment or other amount due and payable to the Association levied by the Board for more than thirty (30) days after it is due, as provided in the Declaration, or (ii) continues to violate any provision of the Declaration, the Articles, these By-Laws, or the Rules and Regulations after notice thereof. Ownership of a Lot shall be the sole qualification for membership. No Owner shall have more than one membership for each Lot owned by such Owner. Membership may not be separated from the ownership of any Lot.

2.2.1. **Simple Majority Vote.** Whenever the approval or disapproval of an Owner is required by the Declaration or these By-Laws, such approval or disapproval shall be made only by the person or entity who or which would be entitled to cast the vote or votes of such Lot at any meeting of Members of the Association. Except with respect to election of members of the Board and except where a greater number is required by the Articles, the Declaration, or these By-Laws, votes by Owners of more than fifty percent (50%) of the total votes present (voting in person or by proxy at one time, at a duly convened meeting at which a quorum is present) are required to adopt decisions at any meeting of the Association. Any specified percentage of the Owners means the Owners owning such percentage of the votes in the aggregate.

2.2.2. **Election of Directors.** At each election for Board members one Owner of each Lot shall be entitled to cast for each vacancy to be filled at such election one (1) vote for each Lot owned by such Owner, as provided in the Declaration and the Articles. Board members shall be elected by secret ballot. Those candidates for election receiving the greatest number of votes cast in such election shall be elected. No votes allocated to a Lot owned by the Association may be cast.

2.3. **Rights of Membership Subject to Assessments.** In addition to the other matters to which the rights of membership are subject as set forth elsewhere in these By-Laws and as set forth in the Articles and in the Declaration, the rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of

which assessments is imposed against each Owner of, and becomes a lien upon, the Lot of such Owner as provided in the Declaration.

2.4 Members' Easements of Enjoyment. Subject to the provisions of Section 2.6 of this Article II, every Member shall have a right and easement of enjoyment in and to the Common Facilities, and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

2.5 Title to Common Facilities. Declarant has conveyed the Common Facilities to the Association, free and clear of all liens and encumbrances (except ad valorem taxes and assessments for the year in which the conveyance is made); except for all patent reservations, conditions, restrictions, restrictive covenants, easements, and rights-of-way of record, if any.

2.6 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

2.6.1. The right of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities. In the event the Association proposes to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities, such action must be approved by a simple majority of the Members at a special meeting of the Members called for the purpose of considering such purchase, and written notice of which proposed action shall be mailed to all Members at least thirty (30) days in advance of such special meeting.

2.6.2. The right of the Association to take such steps as are reasonably necessary to protect the Common Facilities against foreclosure;

2.6.3. The right of the Association, as provided in its Articles and By-Laws, acting by the Board, to suspend the rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities for any period during which the following-described delinquency or delinquencies shall continue, upon written notice to any Lot Owner who: (i) fails, neglects, or refuses to pay any assessment or other amount due and payable to the Association levied by the Board for more than thirty (30) days after it is due, or (ii) continues to violate any provision of the Declaration, the Articles, the By-Laws, or the Rules and Regulations after notice thereof;

2.6.4. The right of the Association to charge reasonable admission and other fees for the use of the Common Facilities;

2.6.5. The right of the Association to dedicate, convey, or transfer all or any part of the Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, conveyance, or transfer determination as to the purposes or as to the conditions thereof shall be effective unless approved by a two-thirds (2/3rds) majority of the Members at a special meeting of Members called for the purpose of considering such action, and written notice of which proposed action is mailed to all Members at least thirty (30) days in advance of such special meeting;

2.6.6. The right of individual Members to delegate their rights and easements of enjoyment in and to the Common Facilities as provided in Section 2.8 below; and

2.6.7. If an Owner has an easement for ingress to or egress from such Owner's Lot through the Common Facilities, any conveyance or encumbrance of such Common Facilities is subject to that Lot Owner's ingress/egress easement.

2.7. **Delegation of Use.** Subject to the Declaration, and in accordance with any applicable provisions of these By-Laws and the Rules and Regulations, any Member may delegate his, her, or its rights and easements of enjoyment in and to the Common Facilities to members of his or her family, or to his, her, or its tenants or contract purchasers who reside in his, her, or its Dwelling Unit. Such Member delegating his, her, or its rights of enjoyment in the Common Facilities shall notify promptly the Secretary of the Association in writing of the name of any such person(s) to whom the Member's rights have been delegated and of the relationship between such person(s) and the Member. The delegated rights of such person(s), to whom the Member's rights have been delegated, are subject to all of the provisions, limitations, and conditions hereof and of the Declaration to the same extent as those of the delegating Member.

2.8. **Annual Meetings.** The annual meetings of the Association shall be held in May of each year. At such annual meetings the Board shall be elected by ballot of the Members in accordance with the requirements of Section 3.3 of these By-Laws, and such other business as may properly come before the meeting may be transacted.

2.9. **Place of Meetings.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Board.

2.10. **Special Meetings.** The President shall call a special meeting of the Association upon his or her own initiative at any time, or if so directed by resolution of the Board, or upon a petition signed and presented to the Secretary of the Association by Members of not less than twenty percent (20%) of the aggregate percentage voting interests of the Lots in the Subdivision. The notice of any special meeting shall state the time, place, and purpose thereof. Except as otherwise provided in Article VIII of the Articles of Incorporation or in the Declaration, such meeting shall be held upon not less than ten (10) days' nor more than sixty (60) days' notice to the Members, and not more than sixty (60) days after receipt by the Secretary of the Association of such resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

2.11. **Notice of Meetings.** Except as otherwise provided in Article VIII of the Articles or in the Declaration, the Secretary shall give to each Owner a notice of each annual or regularly-scheduled meeting and of each special meeting of the Association at least ten (10) but not more than sixty (60) days, prior to such meeting, stating the time, place, and purpose thereof. The giving of a notice of a meeting in the manner provided in this Section and Section 2.10 of these By-Laws shall be considered service of notice.

2.12. **Adjournment of Meetings.** Except as otherwise provided in Article VIII of the Articles or in the Declaration, if at any meeting of the Association a quorum is not present, Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting from time to a time, without notice other than announcement at the meeting.

2.13. **Action Without Meeting.** Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Members entitled to vote. Any such written consent shall be filed with the minutes of the proceedings of the Members.

2.14. **Proxies.** A vote may be cast in person or by proxy at all meetings of Members. Proxies shall be duly executed in writing, shall be valid only for the particular meeting(s) designated therein, and must be filed with the Secretary before the appointed time of the meeting(s). If a Lot is owned by more than one person, the designated member of that Lot may vote by a duly executed proxy, and each Owner of the Lot may register protest to the casting of votes by the designated member of that Lot through a duly executed proxy. Such proxy may be granted by any Lot Owner in favor of another Lot Owner or a holder of a mortgage on a Lot. All proxies shall be revocable, but shall be deemed revoked only upon actual receipt by the person presiding over the meeting of written notice of revocation from the Owner(s) granting such proxy. No proxy shall be valid for a period in excess of one (1) year after the execution thereof. A proxy is void if it is not dated or purports to be revocable without notice, or if the Owner(s) granting such proxy convey(s) the Lot to which the vote pertains.

2.15. **Quorum.** Except as otherwise provided in the Articles or in the Declaration, the presence of Members at the meeting of Members, in person or by proxy, entitled to cast ten percent (10%) of the votes shall constitute a quorum. If the required quorum is not present at any meeting, the Members present and entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present. A quorum once attained continues until adjournment despite withdrawal of enough Members to leave less than a quorum. The action of members entitled to cast a majority of the votes present in person or by proxy at a meeting at which a quorum is present will be the act of the Members unless a greater vote is required by law, the Declaration, the Articles, or these By-Laws.

2.16. **Conduct of Meetings.** The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting and a record of all transactions and proceedings occurring at such meetings. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then current edition of *Robert's Rules of Order* shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws, or the Articles. All votes shall be tallied by tellers appointed by the President.

2.17. **Availability of Books and Records.** The Association shall keep at its principal office copies of the Association's books of account, financial records, financial statements for the previous fiscal year, lists of Owners, minutes of meetings of the Board and of the Association membership, the Declaration, the Articles, these By-Laws, and the Rules and Regulations, all of which shall be available for inspection during the Association's regular business hours by any Owner, or any other interested person, and copies of which shall be made available at a reasonable cost.

2.18. **Corporate Seal.** The Association may adopt a corporate seal to be affixed to the contracts and obligations of the Association and to other documents in the discretion of the Board.

**ARTICLE
III.**

Board of Directors

3.1. **Number and Qualifications.** The affairs of the Association shall be managed by a Board of Directors ("Board"). The Board shall be composed of up to five (5) persons each of whom must be a Member of the Association.

3.2. **Delegation of Powers; Managing Agent.** The Board may employ for the Subdivision a "Managing Agent" at a compensation established by the Board. The Managing Agent shall perform such duties and services as the Board shall authorize, including, but not limited to, any of the duties described in the Declaration, the Articles, and these By-Laws; provided, however, where a Managing Agent does not have the power to act under the Declaration, the Articles, or these By-Laws, such duties shall be performed as advisory to the Board. The Board may delegate to the Managing Agent all of the powers granted to the Board by the Declaration, the Articles, and these By-Laws other than the following powers:

- 3.2.1. to adopt the annual budget, any amendment thereto, or to assess any Common Expenses;
- 3.2.2. to adopt, repeal, or amend Rules and Regulations;
- 3.2.3. to designate signatories on Association bank accounts;
- 3.2.4. to borrow money on behalf of the Association; or
- 3.2.5. to acquire or mortgage Lots;

Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice and without cause and without any penalty or other termination fee on no more than ninety (90) days' written notice. The term of any such contract may not exceed three (3) years.

3.3. **Election and Term of Office.**

3.3.1. The Board of Directors will be divided into three classes, each class to be as nearly equal in number as possible. Each class will serve a term of three years. For the first election of Directors following adoption of the Restated Bylaws by the Members, the term of the first class shall expire at the first annual meeting of the Association following its election, the term of the second class shall expire at the second annual meeting of the Association following its election, and the term of the third class shall expire at the third annual meeting of the Association following its election. Thereafter, each class of Directors will serve three-year terms. Each member of the Board shall hold office until the earlier to occur of (a) the expiration of his or her term or (b) the nomination, election, qualification, and taking of office of his or her successor or (c) his or her death, adjudication of incompetency, removal, or resignation. A Board member may serve an unlimited number of terms and may succeed himself or herself.

3.3.2. Persons qualified to be members of the Board may be nominated for election only as follows:

a. By a Nominating Committee appointed by the Board, which Nominating Committee shall include one (1) member of the Board, who shall act as Chairman, and two (2) Members who may but need not be members of the Board. The members of the Nominating Committee shall be appointed by the Board prior to each Annual Meeting of the Association to serve from the close of such Annual Meeting to the close of the next Annual Meeting, and the names of the persons appointed to serve for the following year shall be announced at each Annual Meeting. At least sixty (60) days before each Annual Meeting of Members, the Nominating Committee shall nominate as many persons for Directors as it wishes, but not less than one (1) person for each vacancy on the Board to be filled at that annual meeting. Such nominations shall be made from among Members.

b. The nominations will be delivered to the Secretary who shall prepare a ballot describing the vacancies to be filled, setting forth the names of those nominated by the Nominating Committee for such vacancies, and containing a space for a write-in vote by the Members for each vacancy. The ballots shall be mailed by the Secretary, along with the notices of the annual meeting and a form of proxy, to the Members, or to the holders of proxies then on file with the Secretary, at least fourteen (14) days before the date set forth therein for the return of the ballot, which return date shall not be later than the day before the annual meeting of Members.

c. Each Member or proxy holder shall receive one (1) ballot for each vote the Member or proxy holder is entitled to cast; only one (1) vote may be cast on one ballot. On each ballot the Member or proxy holder will cast one (1) vote for each Directorship to be filled and will place the completed ballot in a sealed envelope marked "Ballot Envelope," but not marked in any other way; each Ballot Envelope shall contain only one ballot, and the inclusion of more than one ballot in one Ballot Envelope shall disqualify all ballots in that Ballot Envelope. All Ballot Envelopes containing one ballot each, which the Member or proxy holder is entitled to complete, will be placed in a "Member's Envelope" which shall bear on its face the name and signature of the Member or proxy holder, the number of Ballot Envelopes being returned, and such other information as the Board may require to determine the right of the Member or proxy holder to cast the votes cast on the ballots.

d. The Member's Envelope will be returned to the Secretary who will place it in a safe place unopened until the day set for the annual meeting of Members at which the elections are to be held. On that day all of the Member's Envelopes will be delivered, unopened, to an Election Committee consisting of two (2) individuals appointed by the President, one of which must be a member of the Association. The appointed individuals shall open all of the Member's Envelopes and, in a manner that does not disclose a Member's vote, establish that:

- (1) The number of Ballot Envelopes corresponds to the number of votes allowed to the Member or proxy holder identified on the Member's Envelope containing

them; and

- (2) The signature of the member or proxy holder on the Member's Envelope is genuine; and
- (3) If the vote is by a proxy holder, that a proxy has been filed with the Secretary, in compliance with Section 2.14 of Article II hereof, and is valid.

3.4. Persons Receiving Largest Number of Votes Will be Elected. The Member's Envelopes will be placed in a safe place, and the Election Committee will open the Ballot Envelopes and count the votes. If any Ballot Envelope contains more than one ballot, all ballots in that Ballot Envelope will be disqualified and not counted. The persons receiving the largest number of votes will be elected as Directors, and the announcement of the elected Directors will be made at the annual meeting of Members. The ballots, Ballot Envelopes, and Member's Envelopes will be destroyed after announcement of the results unless a review of the procedure is demanded by a majority of the Members present in person or by proxy at that annual meeting of Members.

3.5. Removal or Resignation of Members of the Board.

3.5.1. Any one or more of the members of the Board may be removed with or without cause by a majority vote of the Members entitled to vote at a special meeting of Members called for that purpose. A successor shall be elected to fill the vacancy thus created for the remainder of the term of the member being replaced at a special meeting of Members called for that purpose promptly after the occurrence of such vacancy. In case of multiple vacancies, the person receiving the greatest number of votes shall be elected for the longest term.

3.5.2. An Owner or Owners of not less than twenty percent (20%) of the aggregate percentage voting interests of the Lots in the Subdivision may propose the removal of a Board member by giving notice thereof to the Secretary. Any member whose removal has been proposed by such an Owner or Owners shall be given at least twenty (20) days' written notice by the Secretary of the time, place, and purpose of a special meeting of Members and shall be given an opportunity to be heard at the meeting.

3.5.3. A member of the Board may resign at any time and shall be deemed to have resigned upon the failure of such member of the Board to attend three (3) consecutive regular meetings of the Board.

3.6. Vacancies. Except with respect to vacancies caused by the removal of a Board member by a vote of the Owners as set forth in Section 3.5 above, all vacancies in the Board shall be filled by a vote of a majority of the remaining members of the Board. Such vote shall be conducted at a special meeting of the Board held for such purpose promptly after the occurrence of any such vacancy. Any person so elected shall be a member of the Board for the remainder of the term of the member being replaced.

3.7. **Organizational Meeting.** The first meeting of the Board following each annual meeting of the Association (herein referred to as the "Organizational Meeting") shall be held within thirty (30) days thereafter at such time and place fixed by the President (even if he is the outgoing President) at the meeting at which such Board is elected. No notice shall be necessary to the newly elected members of the Board in order legally to constitute such meeting, provided a majority of the whole Board is present at such meeting. The officers of the Association shall be elected at the Organizational Meeting of the Board.

3.8. **Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the members of the Board, but such meetings shall be held at least quarterly. Notice of regular meetings of the Board shall be given to each member of the Board, by mail, facsimile transmission, or by hand delivery, at least ten (10) business days prior to the day designated for such meeting.

3.9. **Special Meetings.** Special meetings of the Board may be called by the President on at least three (3) business days' notice to each member of the Board, given by mail, facsimile transmission, or by hand delivery, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice upon the written request of at least two (2) members of the Board.

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

3.11. **Quorum of the Board.** At all meetings of the Board, a majority of the members shall constitute a quorum for the transaction of business, and the votes of the majority of the members present at the meeting at which a quorum is present shall constitute the decision of the Board. If at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting without notice other than announcement at the meeting. At any reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called and for which notice was properly given may be transacted without further notice. One or more members of the Board may participate in and be counted for quorum purposes at any meeting by means of conference telephone or similar communication equipment pursuant to which all persons participating in the meeting can hear and communicate with each other.

3.12. **Compensation.** Members of the Board shall receive no compensation from the Association for acting as such, but may be reimbursed for any reasonable expenses incurred in the performance of their duties.

3.13. **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Such minute book shall be kept at the principal office of the Association and may be examined at any time by any Owner who may make copies of any entries therein. The Secretary shall, upon request of any Owner, for a reasonable charge,

supply such Owner with copies of such minutes as the Owner designates, certified by the Secretary as being true and correct. The then current edition of *Robert's Rules of Order* shall govern the conduct of the meetings of the Board when not in conflict with the Declaration, these By-Laws, or the Articles.

3.14. Action Without Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members of the Board. Any such written consent shall be filed with the minutes of the proceedings of the Board.

3.15. Validity of Contracts with Interested Board Members. No contract or other transaction between the Association and one or more of its Board members or between the Association and any corporation, partnership, firm, limited liability company, or association in which one or more of the Board members is or are a director or officer, or directors or officers, or is or are financially interested, shall be void or voidable because such Board member or members is or are present at any meeting of the Board which authorized or approved the contract or transaction or because his, her, or their votes are counted, if the circumstances specified in either of the following subparagraphs exist:

3.15.1. The fact that a Board member is also such a director or officer or has such financial interest is disclosed to or known by the other members of the Board and is noted in the minutes of such meeting, and the Board authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Board member or members; or

3.15.2. The contract or transaction is made in good faith and is fair to the Association at the time it is authorized, approved, or ratified.

3.16. Inclusion of Interested Board Members in the Quorum. Any Board member holding such directorship or office or having such financial interest in another corporation, firm, limited liability company, or association may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves, or ratifies a contract or transaction of the type described in Section 3.15 hereof.

3.17. Limited Liability of the Board and its Members. In furtherance, and not in limitation, of Sections 53-8-25, 53-8-25.2, and 53-8-25.3 of the New Mexico Nonprofit Corporation Act (Sections 53-8-1 et seq., NMSA 1978), the Board, and its members in their individual capacities:

3.17.1. Shall not be liable for the failure of any service to be obtained by the Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by an Owner or other person on the Subdivision property, unless in each such instance such injury or damage has been caused by the willful misconduct or recklessness of the Association or the Board;

3.17.2. Shall not be liable to the Owners as a result of the performance of the Board members' duties for any mistake of judgment, negligence, or otherwise, except for the Board members' own willful misconduct or recklessness;

3.17.3. Shall have not be liable in contract to an Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument, or transaction

entered into by them on behalf of the Board or the Association in the performance of the Board members' duties;

3.17.4. Shall not be liable to an Owner, or such Owner's officers, employees, tenants, patients, guests, or invitees, for loss or damage caused by theft of or damage to personal property left by such Owner or his, her, or its officers, employees, tenants, guests, or invitees or entrusted to any employee or agent of the Association, except for the Board members own willful misconduct or recklessness;

3.17.5. Shall not be liable for any use, misuse, or condition of a Lot or Dwelling Unit, for or other act or omission which might in any other way be assessed against or imputed to the Board members as a result of or by virtue of their performance or non-performance of their duties, except for the Board members' own willful misconduct or recklessness.

3.18. **Indemnification.** Each member of the Board in his or her capacity as a Board member, officer, or both, and each officer of the Association in his or her capacity as such, shall be indemnified by the Association against all expenses and liabilities, including damages, fines, penalties, costs, and attorney's fees, reasonably incurred by or imposed upon him or her in connection with any proceeding in which he or she may become involved by reason of his or her being or having been a member of the Board and/or an officer of the Association, or any settlement of any such proceeding, whether or not he or she is a Board member, officer, or both at the time such expenses are incurred, except in such cases wherein such Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his or her duties; provided that, in the event of a settlement, this indemnification shall apply only if and when the Board (with the affected member abstaining if he or she is then a Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification set forth in this Section 3.18 shall be paid by the Association on behalf of the Owners or may be provided by appropriate insurance coverage, and in either case the costs thereof shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Board, the Owners, or otherwise.

ARTICLE

IV.

Officers

4.1. **Officers.** The officers of the Association shall be a President and a Vice President, both of whom shall be elected from among the members of the Board, a Secretary, and a Treasurer. The Association may also have, in the discretion of the Board, one or more additional vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be elected in accordance with the provisions of this Article.

One person may not simultaneously hold two (2) or more of the offices enumerated in this Section 4.1, except those of Secretary and Treasurer.

4.2. **Election.** The officers of the Association, except such officers as may be appointed or elected in accordance with the provisions of Section 4.3 or Section 4.5 below, shall be elected annually by the Board and each shall hold office until he or she shall resign or shall be removed, or otherwise be disqualified to serve, or a successor for him or her shall be nominated and elected, and has qualified and taken office.

4.3. **Subordinate Officers, Etc.** The Board may appoint such other subordinate officers, e.g., Assistant Secretaries or Assistant Treasurers, as the business and affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these By-Laws or as the Board may from time to time determine.

4.4. **Removal and Resignation.** Any officer may be removed, either with or without cause, by a majority of the Board members, at any regular or special meeting of the Board, or, except in case of an officer elected by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board, the President of the Association, or the Secretary of the Association. If at any time either the President or Vice-President shall cease to be a member of the Board, he shall be deemed to have resigned his or her office. Any such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.5. **Vacancies.** A vacancy in any office because of death, adjudication of incompetence, resignation, removal, disqualification, or other cause shall be filled by the Board promptly after such vacancy occurs at a regular or special meeting of the Board in the manner prescribed in these By-Laws for regular elections or appointments for such office.

4.6. **President.** The President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Board, have general supervision, direction, and control of the business and the assets of the Association and other officers. The President shall preside at all meetings of the Members and at all meetings of the Board. The President and any other one (1) officer or member of the Board may prepare, execute, certify, and record any duly adopted Supplemental Declaration. The President shall be, ex officio, a member of any committee, except the Nominating Committee, and shall have the general powers and duties of management usually vested in the office of the president of a nonprofit corporation or association and shall have such other powers and duties as may be prescribed by the Board or these By-Laws.

4.7. **Vice-President.** In the absence or disability of the President, the Vice President (or Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the Vice President so designated by the Board, if any) shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President or Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or these By-Laws.

4.8. **Secretary.** The Secretary shall keep, or cause to be kept, a book of minutes at the principal office of the Association or at such other place as the Board may order, of all meetings of the Board and of the members, with the time and place of holding, whether regular or special, and if special, how authorized and how and when the notice thereof was given, the names of those present at the Board meetings, the number of votes present or represented at the Board meetings and the meetings of Members, and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office of the Association, a register showing the names of the members and their addresses and the names and addresses of their proxies, if any; the number of votes each member or proxy is entitled to cast; the number and date of any certificates issued for the membership (if the Association causes certificates to be issued to evidence membership in the Association); the number and date of cancellation of every certificate surrendered for cancellation; and certificates of Owners of Lots owned by more than one person designating who is entitled to vote for such Lot.

4.9. **Treasurer.** The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; and be responsible for the deposit of all monies in the name of the Association, or the Managing Agent, in such depositories as may from time to time be designated by the Board; and, in general, perform all the duties incident to the office of treasurer of a nonprofit corporation or association.

4.10. **Execution of Documents.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association for amounts in excess of Five Thousand Dollars (\$5,000.00) shall be executed by any two (2) officers of the Association. All such instruments for expenditures or obligations of Five Thousand Dollars (\$5,000.00) or less may be executed by any one (1) officer of the Association, unless by resolution the Board determines to require multiple signatures for expenditures of such lesser amount. Supernumerary, subordinate, or assistant officers shall have no authority in these regards unless the same is explicitly conferred by the Board. The Board may delegate to any agent selected by it the authority to incur expenditures or obligations and to sign checks for amounts not to exceed \$5,000.00.

4.11. **Compensation of Officers.** No officer who is also a member of the Board shall receive any compensation from the Association for acting as such officer, but may be reimbursed for any reasonable out-of-pocket expenses incurred in performing his or her duties; provided, however, the Secretary and Treasurer may be compensated for their services if the Board determines such compensation to be appropriate.

ARTICLE

V.

Budget; Common Expenses; Assessments

5.1. Determination of Annual and Special Assessments Against Owners.

5.1.1. **Fiscal Year.** The fiscal year of the Association shall be July 1 through June 30 unless otherwise determined by the Board.

5.1.2. Preparation and Approval of Budget.

a. At least thirty (30) days before the beginning of each fiscal year commencing July 1, the Board shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the costs of maintenance, management, operation, repair, and replacement of the Common Facilities and all other costs, wages, materials, supplies, services, insurance premiums, legal, accounting, management, landscaping, and other services, and other expenses that may be declared to be Common Expenses by the Declaration, or a resolution of the Board, and which will be required during the ensuing fiscal year.

b. The budget shall also include such reasonable amounts, as the Board considers necessary to provide working capital, a general operating reserve, and reserves for contingencies, repairs, and replacements. The Board shall send to each Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the annual assessment for Common Expenses payable by each Owner, and shall set a date for the annual meeting of the Owners to consider ratification of the budget. Unless at the meeting two-thirds (2/3rds) of the Owners entitled to vote, vote to reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. The Board shall cause a notice of the quarterly payment of the annual assessment for Common Expenses applicable to each Lot to be mailed to the respective Owner(s) after the budget is ratified. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. Such budget shall constitute the basis for determining each Lot's annual assessment for the Common Expenses.

5.1.3. **Annual and Special Assessments.** The total amount of estimated funds required from assessments for the operation of the Association set forth in the budget adopted by the Board and ratified by the Members, shall be assessed against the Lots. In addition, special assessments levied by the Association, as provided in the Declaration, shall be assessed against the Lots. Both annual and special assessments shall constitute liens against the Lots and shall be fixed at a uniform rate for all Lots. Each Owner shall be obligated to pay to the Board or the Managing Agent (as determined by the Board) such annual assessments in quarterly installments and such special assessments as determined by the Association. Within ninety (90) days after the end of each fiscal year, the Board shall supply to all Owners, and to each interested mortgagee requesting the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Association for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board, be placed in reserve accounts, or in a special account to be expended solely for the general welfare of the Owners, or be credited to the Owners in proportion to their respective assessments to the next quarterly installment(s) due from Owners under the current fiscal year's budget until exhausted. Any net shortage shall be assessed promptly by the Board against the Owners in proportion to their respective assessments and shall be payable in full with payment of the next quarterly assessment due.

5.1.4. **Reserves.** The Board shall build up and maintain reasonable reserves for working capital, operations, contingencies, repairs, and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary

during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Owner's annual or special assessment, the Board may at any time levy a further assessment, which shall be assessed against the Owners in proportion to their respective annual assessments, and which shall be payable in a lump sum or in installments as the Board may determine. The Board shall serve notice of any such further assessment on Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the first monthly payment which is due more than ten (10) days after the delivery of such notice of further assessment. All Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessments shall be a lien as of the effective date thereof as determined by the Board.

5.1.5. Effect of Failure or Delay to Adopt Budget. The failure or delay of the Board to adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his, her, or its allocable share of the Common Expenses or special assessments, as herein provided whenever the same shall be determined. In the event of the Board's failure to adopt an annual budget, each Owner shall continue to pay his, her, or its respective quarterly installments in the quarterly amount last established until he, she, or it is provided notice of the new quarterly amount.

5.1.6. Accounts. Except as expressly provided herein, all sums collected by the Board with respect to assessments against the Owners or from any other source may be commingled into one or several funds or held for each Owner in proportion to his, her, or its respective annual assessment.

5.2. Payment of Common Expenses. Each Owner shall pay the annual assessments for Common Expenses and special assessments assessed by the Board and the Association, respectively, pursuant to the provisions of Section 5.1.3. hereof. No Owner may be exempted from liability for the payment of annual assessments of Common Expenses or special assessments by waiver of the use or enjoyment of any portion of the Subdivision or by abandonment of his, her, or its Lot. No Owner shall be liable for the payment of any part of the annual assessments for Common Expenses or special assessments assessed against his, her, or its Lot subsequent to the date of recordation of a conveyance by him to a subsequent Owner of his, her, or its fee-simple title to such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges, and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments against the latter for his, her, or its proportionate share of the annual assessments for Common Expenses and special assessments up to the time of such recordation of such conveyance, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefore; provided, however, that pursuant to the terms of Section 5.5 below any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Owner, and such purchaser shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth.

5.3. Collection of Assessments. The Board, or the Managing Agent at the request of the Board, shall take prompt action to collect any assessments due from any Owner that remain unpaid for more than thirty (30) days from the due date for payment thereof. Any assessment, or installment thereof, not paid within thirty (30) days after its due date shall

accrue a quarterly late charge in the amount of Twenty Five Dollars (\$25.00), or such other amount as may be established from time to time by the Board for that quarter and for each subsequent quarter that such delinquency remains unpaid.

Further, if the delinquent assessment and any late charges are not paid within thirty (30) days after the due date thereof, the Association may (i) bring an action at law against the Owner personally obligated to pay the same and/or (ii) foreclose the lien against the Lot, and there shall be added in both such actions to the amount of such assessment, late charges, and interest the costs of such action and litigation expenses, including reasonable attorneys' fees, and in the event a judgment is obtained, such judgment shall include interest and late charges on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of such action and litigation expenses.

5.4. Suspension of Member's Rights. Rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities, may be suspended by the Board for any period during which any Lot Owner fails, neglects, or refuses to pay any assessment or other amount due and payable to the Association levied by the Board for more than thirty (30) days after it is due.

5.5. Statement of Common Expenses. The Board or Managing Agent shall promptly provide to any Owner, or to any contract purchaser or mortgagee of an Owner, who requests the same in writing, a written statement of all unpaid assessments due from that Owner. Such statement shall be signed and acknowledged by the party preparing them on behalf of the Association. The Board may impose a reasonable charge for such statements to cover the costs of providing them.

ARTICLE VI.

Compliance and Default

6.1. Relief. Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these By-Laws, the Articles, and the Rules and Regulations, as any of the same may be amended from time to time. In addition to the remedies provided in the Declaration, a default by a Owner shall entitle the Association, acting through its Board or through the Managing Agent, to the following relief:

6.1.1. Additional Liability. Each Owner shall be liable for the expense of all maintenance, repair, or replacement rendered necessary by his, her, or its act, neglect, negligence, carelessness, or recklessness or the act, neglect, negligence, or carelessness, or recklessness of such Owner's officers, employees, tenants, guests, or invitees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Association, and only to the extent he, she, or it would be liable therefore pursuant to the laws of the State of New Mexico. Such liability shall include any increase in casualty insurance premiums occasioned by improper use, misuse, occupancy, or abandonment of any Lot or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its right of subrogation.

6.1.2. **Costs and Litigation Expenses, Including Attorneys' Fees.** In any proceeding arising out of any alleged default by or liability of an Owner, the prevailing party shall be entitled to recover the costs of such proceeding and litigation expenses, including attorneys' fees in such amount as may be determined by the court to be reasonable.

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

6.1.4. **Abating and Enjoining Violations by Owners.** The violation of any of the Rules and Regulations adopted by the Board, the breach of the Articles or any By-Law contained herein, or the breach of any provision of the Declaration, shall give the Board and any affected Owner the right, in addition to any other rights, to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

6.1.5. **Suspension of Member's Rights.** Rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities, may be suspended by the Board for any period during which any Lot Owner continues to violate any provision of the Declaration, these By-Laws, or the Rules and Regulations after notice thereof.

ARTICLE VII.

Insurance

7.1. **Power of Attorney.** The Association is hereby irrevocably appointed as attorney-in-fact for each Owner and for each holder of a mortgage or other lien against a Lot and for each owner of any other interest in the Subdivision, for the purpose of purchasing and maintaining insurance as set forth in Section 7.3 below, including the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

7.2. **Insurance Trustee.** The Board shall have the option, in its sole discretion, of naming as an insured, on behalf of the Association, an Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement. The duty of the Insurance Trustee shall be to receive, hold, or otherwise properly dispose of proceeds of insurance

designated in the Insurance Trust Agreement in trust for the Association and Owners, and their mortgagees, or other lien holders, as their interests may appear.

7.3. **Types and Amounts.** The Association shall, to the extent reasonably available at reasonable cost, obtain and maintain the types and amounts of insurance set forth below. Except as otherwise provided, the premiums for all such insurance policies shall be a Common Expense. The Association shall obtain and maintain:

7.3.1. Comprehensive Liability Insurance.

a. Comprehensive Liability Insurance policies, complying with the requirements of Section 7.4 below, insuring the Owners (in their capacity as Owners and Association Members), members of the Board, Association officers, and any Managing Agent retained by the Association, and their respective agents, employees, and volunteers, against any liability to the public or to other Owners, their officers, employees, tenants, guests, or invitees, relating in any way to the ownership, operation, maintenance, and/or use of the Common Facilities and any part thereof and the Public Facilities within the Subdivision, and any other areas under the Association's supervision, ownership, or maintenance responsibilities.

b. Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of any insured because of the negligent acts of any other insured.

c. Limits of liability shall be at least One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence.

d. Coverage under this policy shall include legal liability arising out of lawsuits related to employment contracts of the Association.

7.3.2. Fidelity Bond.

a. Fidelity bond or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association members, officers, members of the Board, trustees, managers, agents, employees, and volunteers) handling or responsible for funds belonging to or administered by the Association. In the event the Association has delegated some or all of the responsibility for the handling of funds to a Managing Agent, such bond or insurance coverage shall include officers, employees, and agents of such Managing Agent.

b. Such fidelity bond or insurance shall name the Association as the named insured and shall be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any time while the bond is in force and in no event less than the amount of the annual assessments for Common Expenses on all of the Lots in the Subdivision.

c. In connection with such coverage, an appropriate endorsement to such bond or policy in order to cover any persons who serve without compensation shall be added if the bond or policy would not otherwise cover volunteers.

d. Such fidelity bond or insurance shall also:

(1) name the Association as an obligee;

(2) contain a waiver by the issuer of the bond of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(3) provide that the same may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to the Association.

7.3.3. Indemnification Insurance. Insurance to satisfy the indemnification obligation of the Association and all owners set out in Section 3.18.

7.3.4. Other Insurance. The Association may carry any other insurance it deems appropriate or as may be required by law, rule, ordinance, or regulation to protect the Association or the Owners.

7.4. Required Provisions. Insurance obtained by the Association shall be substantially in accordance with the following provisions to the extent reasonably available at reasonable cost, unless any such provision is amended or waived by the Board:

7.4.1. All policies shall be written with a company licensed to do business in the State of New Mexico.

7.4.2. Exclusive authority to adjust losses under insurance policies obtained by the Association shall be vested in the Board or its authorized representative.

7.4.3. With respect to the insurance policies issued to the Association, the Association shall endeavor, but not be required, to cause such policies to provide that:

a. The enforceability of such policies is not affected by any waiver of subrogation as to any and all claims against the Association, its officers, the Board and its members, any Managing Agent, the Owners and their respective officers, employees, volunteers, tenants, guests, and invitees, such subrogation being hereby waived;

b. Such policies cannot be canceled, invalidated, or suspended by means of the conduct of any one or more Owners, all defenses based upon coinsurance or acts of the insured being waived by the insurer, and in no event may cancellation, material modification, invalidation, or suspension for any reason be effected without at least thirty (30) days' prior written notice to the Association, any Insurance Trustee, each Owner, and all holders of Owner's mortgages whose names are on file with the insurer;

c. Such policies cannot be canceled, invalidated, or suspended on account of the conduct of any officer or employee of the Association or of any Managing

Agent without a prior demand in writing that the Association or any Managing Agent, as the case may be, cure the defect within a reasonable period of time;

d. Any “no other insurance” clause in such policies shall not prohibit any Owner from obtaining insurance on his, her, or its individual Lot;

e. The name of the insured under each policy required pursuant to this Article VII shall be stated in form and substance substantially as follows: “Desert Ridge Trails Homeowners Association, for the use and benefit of the individual owners of the Lots contained in DESERT RIDGE TRAILS SUBDIVISION, UNIT I, an Addition to the City of Albuquerque.” The policies may alternatively be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the Association, the Owners and their mortgagees, as provided for in Section 7.2 above.

f. Loss payable under each policy required pursuant to this Article VII shall be in favor of the Association or Insurance Trustee (if an Insurance Trustee has been appointed by the Board pursuant to Section 7.2), as trustee for each Owner and each such owner’s mortgagee(s) as their interests may appear. Policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), or shall otherwise be endorsed to fully protect all such mortgagees’ interests;

g. Coverage may not be prejudiced by: (i) any act or omission of one or more Owners when such act or omission is not within the control of the Association; or (ii) any failure of the Association or its agents, if any, to comply with any warranty or condition regarding any portion of the Subdivision over which the Association has no control;

h. All policies of property insurance, if any, shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (i) without the prior written approval of the Board (or any Insurance Trustee), or (ii) when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party or with any requirement of law;

i. Insurance coverage obtained and maintained by the Association pursuant to the requirements of this Article VII may not be brought into contribution with insurance purchased by Owners or their mortgagees;

j. Insurance coverage obtained and maintained by the Association pursuant to the requirements of this Article VII shall provide that no assessment may be made against Owners’ mortgagees nor become a lien on the mortgaged premises superior to the lien of any first mortgage; and

k. Any Insurance Trust Agreement will be recognized.

**ARTICLE
VIII.**

Amendments

8.1. **Amendments to By-Laws.** Except as otherwise provided in any one or more of these By-Laws, the Articles, or the Declaration, the provisions of these By-Laws may be amended, altered, or repealed, and/or new By-Laws adopted, by the Board of Directors with the affirmative vote of two-thirds (2/3rds) of the votes of Members entitled to vote, who are voting in person or by proxy at a special meeting duly called for that purpose, written notice of which shall be mailed to all Members at least thirty (30) days in advance of such special meeting and shall set forth the purpose of the meeting.

8.2. **Amendments to Declaration.** The Declaration may be amended pursuant to the provisions of the Declaration. Two (2) officers or Board members of the Association, one of whom must be the President of the Association, may prepare, execute, certify, and record any properly adopted Supplemental Declaration on behalf of the Association.

8.3. **Amendments of Rules and Regulations.** The Rules and Regulations may be amended, altered, or repealed, and/or new Rules and Regulations adopted, by the Board of Directors from time to time without the vote of the Members.

**ARTICLE
IX.**

General Provisions

9.1. **Notices.** All notices, demands, bills, statements, or other communications under the Declaration or hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid (i) if to an Owner, at the address which the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Owner, or (ii) if to the Association, the Board, or to the Managing Agent, at such address as shall be designated by notice in writing to the Owners pursuant to this section. If a Lot is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

9.2. **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision thereof.


9.3. **Gender and Number.** Pronouns of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders, and pronouns singular in number in these By-Laws shall be deemed to include the plural, and vice versa, whenever the context so requires.

9.4. **In Case of Conflict.** In the case fo any conflict between the Articles and these By-Laws, the Articles shall control, and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

9.5. **Severability.** If any Article of these By-Laws, or any term, condition, or other provision thereof, or the application thereof to any person or entity or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of these By-Laws, and the application of such Article of these By-Laws, or such term, condition, or other provision thereof, to persons or entities or circumstances, other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby; and these By-Laws and each term, condition, and other provision thereof to persons or entities or circumstances, other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby; and these By-Laws and each term, condition, and other provision of these By-Laws shall otherwise be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Association has caused these By-Laws to be executed by its principal officer on behalf of DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION on this 24th day of July, 2008.

DESERT RIDGE TRAILS HOMEOWNERS
ASSOCIATION

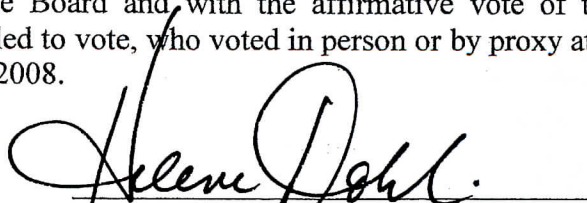
By 
Thomas C. Clausen
President

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION, a New Mexico non-profit corporation; and

That the foregoing By-Laws constitute the restated By-Laws of that Association, as duly adopted by the Members of the Board and with the affirmative vote of two-thirds (2/3rds) of the votes of Members entitled to vote, who voted in person or by proxy at a special meeting held on the 26th day of June, 2008.


Helene Dobbins
Secretary