

FIRST AMENDED MASTER

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

RAINMAKERS,

(An Expandable, Convertible and Mixed Use Project)

DEVELOPED BY:

**CDS RAINMAKERS – LAND L.C.
5295 South 300 West, Suite 175
Murray, Utah 84107**

WHEN RECORDED RETURN TO:

*John Underwood, Esq. 1221 Mechem,
Suite 5 Ruidoso, New Mexico 88345*



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**FIRST AMENDED MASTER
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RAINMAKERS
(An Expandable, Convertible and Mixed Use Project)**

This First Amended Master Declaration of Covenants, Conditions and Restrictions for Rainmakers, a mixed use project, dated this 1st day of JUNE, 2006 is made and executed by CDS Rainmakers Land, L.C., a Utah Limited Liability Company, whose principal address is 5295 South 300 West, Suite 175, Murray, Utah 84107, and amends those Declarations and Covenants dated October 1, 2004 and filed for record, June 1, 2005, in the Records of the County Clerk of Lincoln County in Book 2005, at Page No. 5125.

RECITALS:

- A. The property is an area of unique natural beauty, featuring distinctive terrain:
- B. By subjecting the Property to this Declaration, it is the desire, intent and purpose of developer to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.
- C. This Declaration of Covenants, Conditions and Restrictions affects that certain real property located in Lincoln County, New Mexico described with particularity in Article II below.
- D. Developer is the owner of all of the Property and Lots located in Rainmakers, a planned unit development, located in Lincoln County, New Mexico, a plat of which was recorded and filed in the Office of the County Clerk of Lincoln County, New Mexico on or about June 1, 2005, in Cabinet I, Slide No. 309. (hereinafter referred to as the "Property").
- E. This Declaration of Covenants, Conditions and Restrictions is created and filed pursuant to the law of the State of New Mexico.
- F. This Declaration of Covenants, Conditions and Restrictions are written to cover future platted units of the Rainmakers Subdivision by the filing of documents adding each specific unit with addendums or supplements to this Declaration.
- G. Developer intends, by recording this Declaration, to establish a general plan of development that provides a flexible and reasonable procedure for the future expansion of the Property to include additional real property as Developer deems appropriate, and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising

the Property. An integral part of the development plan is the creation of a master or umbrella owners association comprised of all owners of real property in the Property, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

- H. Developer has constructed, is in the process of constructing or will construct upon the property a mixed use development, comprised of residential, commercial, resort and related parcels, which shall include Lots, Single Family Residential Units, Common Area, Limited Common Area, Golf Course and other improvements. All of such construction has been, or is to be, performed in accordance with New Mexico Law and plans contained in the Record of Plat Map to be recorded concurrently herewith.
- I. Developer intends to sell to various purchaser's fee simple title to the Lots contained in the Tract, and a corresponding membership interest in the Association (which shall own the Common Area), subject to the Record of Survey Plat, and the covenants, conditions and restrictions set forth herein.
- J. Since the completion of the Property may be in phases, the completed Project will consist of the original phase and all subsequent phases.
- K. Developer desires, by filing this Declaration and Record of Plat Map, to create an Association under New Mexico Law and to submit Units One through Five of the Subdivision and all improvements now or hereafter constructed thereon to the terms, covenants and conditions of this Declaration.
- L. The Project is to be known as "Rainmakers Golf & Recreation Community".

NOW, THEREFORE, Developer hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions and equitable servitudes. The said covenants, conditions, restrictions and equitable servitudes are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals.

I. DEFINITIONS

It is the Developer's intent to define key terms in a manner identical to or consistent with the terms used in New Mexico Law. When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated unless the context clearly requires otherwise. In the event of any conflict, inconsistency or

incongruity between the following definitions and those set forth in the New Mexico Law, the latter shall in all instances govern and control.

1. Activity Card shall mean and refer to cards, keys or other means of access to the community, issued by the Association which confer upon the holder rights of access to an use of recreational facilities and other amenities within the Project (subject to the payment of membership, admission or other user fees as established by the Board from time to time).
2. Additional Charges shall mean are refer cumulatively to all collection and administrative costs, including but not limited to any and all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association or where the context so requires, any RHOA or CPOA.
3. Additional Land shall mean and refer to real estate that may be annexed to the Project.
4. Annexation shall mean and refer to real estate that may be annexed to the Project.
5. Archaeology Site or Protected Site shall mean and refer to that certain protected and restricted access area or areas, including without limitation the sites identified by the Archaeology Report dated "September 2000" (Report #SNMASOONM352; NMCRIS #71436), and maintained in the Association offices.
6. Architectural Review Committee or ARC shall mean and refer to the committee established by the Board to review all plans and applications for the construction and modification of improvements on the Property (subject to the rights reserved to the Developer) and to administer and enforce the architectural controls and guidelines.
7. Area of Common Responsibility shall mean and refer to all land and improvements within the Project, including the Common Area, which are the responsibility of the Association to maintain, repair and replace.
8. Area of Personal Responsibility shall mean and refer to all land and improvements within the Project which are the responsibility of the Owner (sometimes referred to as Limited Common Area) to maintain, repair and replace.
9. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the Association or where the context requires any RHOA or CPOA.
10. Assessment shall mean and refer to a charge, cost or fee including Regular, Special Benefit and Individual Assessments.
11. Association shall mean and refer to the Rainmakers Master Association, Inc., the master or umbrella association of all the Owners at Rainmakers acting as a group in accordance with this Declaration.

12. Base Fee shall mean and refer to the maintenance charge assessed all Owners and Lots by the Association to pay for Common Expenses of the Association.
13. Base Residential Area Homeowners Association Fee or Base RHOA Fee shall mean and refer to the annual maintenance and operations charge assessed all Owners of a Lot in a Residential Area-by the RHOA.
14. Base Square Footage shall mean and refer to the number of square fee of ground or floor space within each Lot/Unit as computed by reference to the Plat Map and rounded off to the nearest whole number.
15. Board shall mean and refer to the duly elected and qualified Board of Directors of the Association.
16. Building shall mean and refer to any of the structures built in the Project and shall include all other appurtenances and improvements thereto or used in connection therewith.
17. Business and Trade shall be construed to have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefore. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this subsection.
18. By-Laws shall mean and refer to the By-Laws of the Association, a copy of which are attached to this Declaration as Exhibit "15" and incorporated herein by this reference.
19. CDS Rainmakers – Golf L.C. shall mean and refer to the company which owns and operates the Golf Course located within the Project.
20. CDS Rainmakers – Land L.C. shall mean and refer to the Developer.
21. CDS Rainmakers – Utilities L.C. shall mean and refer to the company which owns and operates the utilities as the term is generally defined in its ordinary commercial meaning.
22. Capital Improvement shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.
23. Class B Control Period shall mean and refer to the period during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors. The Class "B" Control Period shall expire upon the first to occur of the following: (a) when the

Class "B" membership terminates on December 31, 2020; (b) when the Class B Member executes and records a written Waiver of his right to control.

24. Commercial Property Owners Association or CPOA shall mean and refer to a sub association of the Owners in a Commercial Area acting as a group in accordance with the Declaration, and subject to the Association.
25. Committee shall mean and refer to the Board or, if the context requires, the ARC.
26. Common Areas or Common Areas and Facilities shall mean and refer to all real property governed by the Association for the common use and enjoyment of the Owners. The Common Area shall specifically include the areas designated upon the Plat Map of Rainmakers as "Common Area," including that real property located within the Project deeded to the Association or in which the Association owns any right, title or interest for the common use and benefit of the Owners or their successors, assigns, tenants, families, guests and invitees.
27. Common Expense shall mean and refer to the actual and estimated expenses of operating the Association, including without limitation (a) expenses of security, insurance, ad valorem taxes; (b) the cost of supplies, equipment and machinery; (c) utility costs for power, gas, water and sewer; (d) expenses of administration, accounting and payroll, (e) expenses of snow removal, road repairs and replacement, landscaping, and maintenance, repair, or replacement of the Common Areas and Facilities; (f) expenses agreed upon as common expenses by the Association; and (g) any reasonable reserves required by the Association or governmental mandates.
28. Convertible Land shall mean and refer to that which may later be converted into one or more Lots, Common Area or Private Yard Area.
29. Conservation Restriction: A restriction on development that has been placed on part of the property owned by Declarant which includes that area designated on the plat as "Green Space" which is for the benefit of wildlife and habitat, as shown on Exhibit "B" of the Conservation Restriction filed of record in the Lincoln County Clerk's Office, Book 2005, Page 6023 at 1 -14 on June 27, 2005.
30. Covenant to Share Costs shall mean and refer to any declaration of easements and/or covenant to share costs executed by Developer or the Association and recorded in the Office of the County Clerk of Lincoln County, New Mexico, which creates easements for the benefit of the Association and the present and future owners of real property subject to such Covenant to Share Costs, and/or which obligates the Association and such owners to share the costs of maintaining certain property described therein.
31. Declaration shall mean and refer to this Master Declaration of Covenants, Conditions and Restrictions of Rainmakers.

32. Design Guidelines shall mean and refer to the written rules and standards attached as "Exhibit 5". Such Design Guidelines shall promote both high quality architectural, design, engineering and building standards, while incorporating a reasonable degree of variety and flexibility, and maintaining an overall design and conceptual consistency congruent with the Master Plans.
33. Developer shall mean and refer to CDS Rainmakers Development L.C. and CDS Rainmakers – Land, L.C., a Utah limited liability company, and its successors and assigns.
34. Dwelling shall mean and refer to a residential dwelling or living unit.
35. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
36. Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
37. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or, if the context requires, the Board or Arc. A vote which is for any reason suspended is not an "eligible vote".
38. Equestrian Park shall mean and refer to that strip, parcel or area of land designed and intended for the use of horses as shown on the Plat Map.
39. Equity Owner shall mean and refer to the owner of an interest in the Property or Private Amenity, such as the Golf Course, with a percentage of ownership interest in the Property, and voting rights.
40. Exclusive Common Area shall mean and refer to that portion of the Common Area intended for the exclusive use of primary benefit of one or more, but less than all, residential, resort, and commercial owners.
41. Expandable Association shall mean that the Association may expand its membership to include any additional lots and/or other Convertible Land which is developed subsequent to the filing of this document.
42. Facilities shall mean and refer to streets, entrances and other ways, fences, gates, utilities, security systems, equipment, and structures used to house and maintain such, equipment and associated real estate.
43. Family shall mean one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt,

nephew, niece, great-grandparent or great-grandchild or (3) a group of not more than three unrelated persons who live together, cook together and maintain a common house hold and single housekeeping unit, but not as a boarding or rooming house. For purposes of this definition, this may include a person or persons as a caretaker.

44. Golf Course shall mean and refer to Rainmakers Golf Club as so designated on the subdivision Plat Maps set aside for a golf course and related recreations amenities, as the term *golf course* is generally defined in its ordinary commercial meaning.
45. Governing Document shall mean collectively the documents governing the Project, including but not limited to the applicable New Mexico Law as well as this Declaration, By Laws, Rules and Regulations, and Articles of Incorporation.
46. Improved Lot means each Lot or part therein of said Lot as set forth on the Plat Map upon which a residential, commercial or resort structure has been constructed.
47. Improvement shall mean and refer to every structure and all appurtenances thereto of every type and kind, including but not limited to, Buildings, patios, tennis courts, swimming pools, garages, mailboxes, aerals, antenna, satellite dishes, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreak, planting, planted trees and shrubs, poles, signs, exterior air conditioning, water softener fixtures or equipment, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.
48. Land shall mean and refer to all of the real property within the Project and subject to this Declaration.
49. Limited Common Area shall mean and refer to those Common Areas and Facilities designated in the Declaration as reserved for the use of a certain Unit or Units to the exclusion of the other Units.
50. Lot aka Lot/Unit shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Map filed with this Declaration or amendments thereto.
51. Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot.
52. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.
53. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

54. Map shall mean and refer to the Plat Map of the specific Rainmaker unit on file in the office of the County Clerk of Lincoln County, New Mexico.
55. Master Declaration shall mean and refer to this instrument as it may be amended from time to time.
56. Master Plan or Plans shall mean and refer to the master development plan for the Project (as amended and expanded from time to time to include additional property annexed and to accommodate reasonable variations from the original mater concepts and to meet the requirements of governmental authorities having jurisdiction over the development of the Project), which development plan has been created by the Declarant, reviewed by and conceptually accepted by appropriate governmental authorities and includes projected varied residential uses, including single family detached residences, multi-family housing, condominium, townhouse and other residential uses, combined with certain recreational areas, varied commercial use, green-space and a golf course.
57. Member shall mean and refer to an Owner obligated, by virtue of his ownership of property in the Project to be a shareholder in the Association or where the context so requires, a RHOA or CPOA. In addition and where the context so requires the term Member may mean and refer to a participant in a group, such as the Board or a Committee.
58. Mortgage shall mean and refer exclusively to either a mortgage or deed of trust on any Lot/Unit, but shall not mean or refer to a Uniform Real Estate Contract, Land Sales Contract or an Executory Contract of Sale.
59. Mortgagee shall mean and refer exclusively to a mortgagee under either a mortgage or a beneficiary under a Deed of Trust on any Lot/Unit, but shall not mean or refer to a seller under a Uniform Real Estate Contract, Land Sales Contract, or an Executory Contract of Sale.
60. Nonresidential Lot/Unit shall mean and refer to a portion of the Property subject to the Declaration which is intended for any type of independent ownership for use and occupancy as permitted hereby and the applicable zoning ordinances of Lincoln County, New Mexico. The term shall include all portions of the Lot/Unit owned including any structure thereon as well as unimproved property intended for such permitted development, and shall specifically include, without limitation, office, research, industrial and retail properties, each unity within an office condominium, hotels, nursing homes, and similar community care facilities. For the purposes of this Declaration, a Nonresidential Lot/Unit shall come into existence when a supplemental declaration and/or map is recorded in the office of the County Clerk of Lincoln County, New Mexico, designating such use as approved by said county.
61. Occupant shall mean and refer to any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled

to occupy and use any Building or Improvement on a Lot/Unit whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

62. Office of the County Clerk shall mean and refer to the Office of the County Clerk of Lincoln County, New Mexico.
63. Owner shall mean and refer to the owner of a Lot/Unit or any other portion of the Property, Including an Equity Owner.
64. PUD or Planned Unit Development shall mean a residential, commercial, resort or mixed use planned unit development as described in Ordinance No. 1991-8 of Lincoln County, New Mexico.
65. Parking Footage shall mean and refer to square footage assigned to a parking space, stall, carport, garage, or other parking amenity by the Developer in the Plat Map, as and when applicable.
66. Period of Developer's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating one hundred twenty (120) days after the occurrence of the earlier of the following events: (a) December 31, 2020; or (b) When the Developer executes and records a written Waiver of his right to control.
67. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.
68. Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.
69. Plat Map shall mean and refer to the "Record of Plat Map or Maps of Rainmakers" on file in the office of the County Clerk of Lincoln County, New Mexico as they may be amended from time to time. The Plat Map will show the location of the Lots/Units, Common Area and other Improvements.
70. Private Amenity shall mean and refer to certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Project, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise. For example by way of illustration and not limitation, any golf course, park, utility, resort, and all related and supporting facilities and improvements which are owned and operated by Persons other than the Association shall be a Private Amenity.

71. Private Street shall mean all roadways designated as such upon the plat.
72. Private Yard Area or PYA shall mean and refer to those common areas and facilities designated in the Declaration as reserved for the use of a certain Lot or Lots to the exclusion of the other Lots.
73. Project shall mean and refer to the entire Rainmaker Golf & Recreation Community.
74. Property shall mean and refer to all of the land or real estate, improvements, and appurtenances submitted to this Declaration.
75. Rainmakers shall mean and refer to this Project.
76. Recreational Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.
77. Recreation Tract shall mean and refer to a Tract or Tracts so designated on the subdivision Plat Map or Maps.
78. Reduced Common Areas shall mean and refer to those Common Areas and Facilities as reduced by the conversion of Convertible Land as permitted herein.
79. Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.
80. Residential Area shall mean and refer to any designated portion of the Project zoned for residential use.
81. Residential Homeowners Association or RHOA shall mean and refer to a sub-association of the Owners in a Residential Area acting as a group in accordance with this Declaration, and subject to the Association.
82. Residential Unit shall mean and refer to any structure situated upon a portion of the Property intended for any type of independent ownership and for use and occupancy as a single family residence.
83. Single Family Dwelling or Residence shall mean and refer to both the architectural style of a Dwelling and the nature of the residential use thereof or activity permitted therein.

84. Size shall mean and refer to the sum of the Base Square Footage, Parking Footage, Storage Footage, and/or Mean Acreage of a Lot/Unit, using industry standards for measurement, as set forth in the Plat Map and rounded off to a whole number.
85. Storage Footage shall mean and refer to the square footage assigned to a Storage Unit by the Developer in the Plat Map.
86. Sub Association shall mean and refer to a RHOA or a CPOA.
87. Supplemental Declaration shall mean an Addendum or Supplement to the Declaration which adds contiguous properties to the Property covered by this Declaration. Such Supplemental Declaration may, but is not required to impose, expressly or by reference, additional restrictions and obligations, on properties submitted by that subsequent Declaration to provisions of this Declaration.
88. Total Votes shall mean and refer to the total number of available votes in the project.
89. Tract shall mean and refer to an area of land or subdivision unit, as the context requires, so designated on the subdivision Plat Map or Maps.
90. Trail shall mean and refer to that strip, parcel, or area of land dedicated to equestrian and pedestrian traffic, such as the riding of horses, hiking, walking, jogging, and the like, and as so designated on the Plat Map.
91. Unimproved Lot means each Lot upon which there is no residential, commercial, or resort structure.
92. Unit shall mean and refer to each unit within a residential condominium constituting a separate physical part of the Property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, and any utility system exclusively serving such unit.
93. Unit Number shall mean and refer to the number, letter or combination of numbers and letters designating the Unit in the Declaration and the Record of Survey Map.
94. Use Restrictions shall mean and refer to the rules and use restrictions set forth in Exhibits "1 and 2," as they may be modified, amended, repealed, canceled, limited, withdrawn, or expanded from time to time.
95. Utility shall mean and refer to electrical, gas, water, sewer, telephones, cable, communications facilities, and similar utilities, as may be designated by the Developer or CDS Rainmakers – Utilities L.C., from time to time.
96. Voting Group shall mean one or more Residential Areas or Commercial Area comprised of Owners who vote on a common slate for election of Members to the Board of Directors.

II. SUBMISSION

The Property, described with particularity on Exhibit "16" attached hereto and incorporated herein by this reference, is located in Lincoln County, New Mexico. The Property is situated within Rainmakers. The Property is hereby submitted to the terms, covenants and conditions of, is hereby made subject to, and shall be governed and regulated by this Declaration and New Mexico Law. In addition:

The Land is SUBJECT TO the described easements and rights of way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above described parcel of real property.

ALL THE FOREGOING IS SUBJECT TO AND THE DECLARANT HEREBY EXPRESSLY RESERVES (a) a perpetual easement and right of way in, on, across, over, under and through the Tract, and other appurtenances and rights incident to, appurtenant to, or accompanying said real property (and any Additional Land which may be added to the Project from time to time) for the benefit of the Declarant and his successors and assigns, for the purpose of installing, constructing, maintaining and operating a Private Amenity or Amenities, including without limitation the right to erect, maintain and operate in, on or about the Property communications facilities, air conditioned equipment room or rooms, water lines, utility lines, transmission lines, electronic equipment, transmitting and receiving antennas, generator and generator pad, and supporting equipment and structures thereto; and (b) a perpetual easement and right of way in, on, across, over, under and through the Tract, and other appurtenances and rights incident to, appurtenant to, or accompanying said real property to the Additional Land regardless of whether it is added to the Project for its benefit of Declarant, or his successors and assigns, including without limitation the builders and owners of Lots/Units on said land if it is developed, for the purposes of (1) vehicular and pedestrian access thereto, including without limitation all motor, construction and emergency vehicles, and (2) utility access, such as gas, electrical, water, sewer,

cable, telephone, communications facilities, and the like to said Additional Land.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Maps or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, ingress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ALL OF THE FOREGOING IS SUBJECT TO: The right, title and interest of CDS Rainmakers – Land, L.C., CDS Rainmakers – Golf, L.C. and CDS Rainmakers – Utilities, L.C. in and to the golf course, utilities and all other Private Amenities.

ALL OF THE FOREGOING IS SUBJECT TO: The water rights and water shares of the Developer, and CDS Rainmakers – Utilities, L.C., whether such water is above, on or below ground, which rights are expressly reserved hereby.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions, and restrictions, subject to New Mexico Law:

A. PLAN OF DEVELOPMENT

1. Description of Improvements. The significant improvements in the Project include, or may include, residential areas, commercial areas, resort and mixed-use areas and structures, including without limitation single family detached homes, residential condominiums, and townhomes, stacked and terraced units, clusters, multi-family sites, golf course and clubhouse, restaurant, and other related uses, together with Common Areas and Facilities, and other physical improvements, with an emphasis on natural vegetation and zeriscape. The Project may also contain other improvements of a less significant nature.
2. Exclusive Common Area. The Developer reserves the right to designate (or change a designation of) certain portions of the Common Area as Exclusive Common Area as long as it owns any of the Property. Exclusive Common Area shall be Common Area that is reserved for the exclusive use of primary benefit of Owners, occupants and invitees of Lots/Units within a particular Residential Area or Commercial Area. Exclusive Common Area may include, without limitation, recreational facilities, rights of way and medians, and other portions of the Common Area within a particular area. All particular costs associated with the Exclusive Common Area shall be included in a RHOA or CPOA Base fee unless otherwise determined by the Board. In addition, by recording a Supplemental Declaration, the Association may designate Common Area as Exclusive Common Area (or change a designation) upon a majority vote of the Class "A" Members in the Association, subject to the consent of the Developer so long as it owns any of the Property. The Association may permit Owners of a Lot/Unit in other areas to use all or a portion of Exclusive Common Area, upon payment of a reasonable use fee.
3. Rights of Ownership. Possession and Easement of Enjoyment. Every Owner shall be entitled to exclusive ownership and possession of his Lot/Unit. Every owner shall have a right and easement of enjoyment to the Common Areas and Facilities for the purpose for which it was designed and intended. Owners shall have a right and easement of enjoyment to appurtenant PYA for the purpose for which it was designed and intended, subject hereto and any rules and regulations which the Board may adopt from time to time.
4. Membership in the Association. Membership in the Association is mandatory and may not be severed, separated or partitioned from Lot/Unit ownership. The owner of each Private Amenity may be a Sub-Association as defined within this document and shall have voting privileges, will be assessed fees and will be assigned membership units and have the corresponding number of votes as determined by both parties prior to the inclusion within the Association.
5. Conveyance. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot/Unit shall describe the interest or estate involved substantially as follows:

ALL OF LOT/UNIT NO. _____ contained within Rainmakers, as
the same is identified in the Plat Map recorded in the Office of the

County Clerk of Lincoln County, New Mexico, in Cabinet _____, No. _____ (as said Record of Plat Map may have hereto been amended or supplemented) and the Declaration of Covenants, Conditions and Restrictions of Rainmakers, recorded on the _____ day of _____, _____ as _____ of the Official Records of Lincoln County, New Mexico (as said Declaration may have heretofore been amended or supplemented), together with an appurtenant membership interest in and to the Association.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot/Unit. Neither the membership in the Association, nor the right of non-exclusive use of a Common Area shall be separated from the Lot/Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot/Unit to which they relate.

6. Plan of Development, Applicability and Effect. Developer has established a general plan of development for the Project as a Master Planned Community in order to protect all Owner's quality of life and collective interests, the aesthetics and environment within the Project and the vitality of and sense of community within the Project, all subject to the right of the Board and members to respond to changes in circumstances, conditions, needs, and desires within the Project. The Project is subject to the land development, architectural, and design provisions described herein, the other provisions of this Declaration governing individual conduct, and uses of or actions upon the Project, and the guidelines, rules, and restrictions promulgated pursuant hereto, as each may be amended from time to time, all of which establish affirmative and negative covenants, easements, and restrictions on the Project. Except as otherwise expressly provided herein, all provisions of this Declaration and any rules shall apply to all Owners, occupants, tenants, guests, and invitees of any Lot/Unit.
7. Delegation of Use. Any Owner may delegate the right of enjoyment to the Common Areas and Facilities to members of the Owner's family and to tenants, renters, lessees, guests, visitors, and invitees, except the Activity Card is non-transferable to other third persons, without the prior written consent of the Developer or, at the end of the Developer's Period of Control, the Board.
8. Annexation of Private Amenities. If reasonable available, either after the Developer turns the control of the Association Board of Directors over to the Association, or during its control period, the Developer or Owners offers the Private Amenities to the Association, the Association may purchase and operate any Private Utility (or Amenity) and its facilities, infrastructure and easements as provided for or identified herein or in the Plat Map and Master Plan or, in the alternative, contract separately for such services. The Golf Course and its related facilities are not subject to this Annexation right.

9. Owners' Acknowledgment. Because each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his property can be affected by this Declaration and any amendments, provisions, and that the use restrictions and rules may change from time to time, all Owners are given notice that (a) their ability to use their privately owned property is limited hereby, (b) the Board and/or the Association may amend the Declaration, use restrictions or adopt rules which modify, cancel, limit, create exceptions to, or expand the use, and (c) the Developer may amend the use restrictions or other portions of this Declaration.

B. EASEMENTS

1. Easements: Drainage, Support, Maintenance and Repair. The following easements and rights of way are hereby RESERVED for and GRANTED to the Developer and, at the termination of the Developer's Period of Control, the Association.
2. Easements of Encroachment. Developer reserves unto itself, so long as it owns any property in the Project, easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between any adjacent Lot due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing misconduct on the part of the Developer.
3. Easements for Utilities. Developer reserves unto itself so long as it owns any property in the Project, and grants to the Association an easement for the purpose of access and maintenance upon, across, over, and under all of the Property to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, internet service, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephone, gas, and electricity. The Developer and/or the Association may assign these rights to any local utility supplies, cable company, security company and other company providing a service or utility to the Project subject to the limitations herein. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of the Person exercising the easement. Developer specifically grants to the local utility suppliers easements across the Project for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Developer. The exercise of this easement by any party other than the Association shall be subject to prior notice to the

Association, which shall be permitted to coordinate and supervise access to the Project by the grantee of the easement. The exercise of the easement also shall not unreasonably interfere with the use of any Lot, and shall be created only in "set back" areas, unless they are not available. Except, in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

4. Easement Reservation for Expansion. Developer hereby reserves to itself and for Owners in all future phases, a perpetual easement and right-of-way for access over, upon, and across the Property and for use of the Common Areas and Facilities throughout the Project. The Developer hereby reserves, for itself and its successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of any Additional Land, Convertible Land, real property annexed to the Project, or adjoining real property owned by the Developer, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Developer agrees that it and its assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Developer further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Developer, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property. The exact location of these easements and rights-of-way may be identified by recorded instruments.
5. Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Project; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner(s) of the affected property, the Board, and the Developer as long as it owns any property in the Project.
6. Easements for Maintenance and Enforcement. The Developer and, at the termination of the Developer's Period of Control, the Association shall have the right, and a perpetual easement is hereby granted to enter all portions of the Project, including each Lot to (a) perform its maintenance responsibilities, and (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, Rules and Regulations.
7. Rights to Surface Water, Groundwater, Storm water Runoff, Effluent, and Water Stored Underground. To the extent allowed by applicable New Mexico State Law, Developer hereby reserves for itself and its designees all rights to surface water which are appurtenant to the Project, all of which surface water rights are to be consolidated by Developer for use on the golf course within the Project and for storage in its water storage facilities to be located within the Project. Developer hereby reserves for itself and its designees all rights to groundwater, storm water runoff, effluent; and water stored in all storage facilities located or produced within the Project. Each Owner agrees, by

acceptance of a deed to a Lot, that Developer shall retain all such rights. Such rights shall include an easement over the Project for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of the Developer, and the reservations made and rights created pursuant to this Section, shall survive the termination of this Declaration. Neither the Developer nor any Owner shall be deemed by this reservation, or the consolidation of water rights to be made pursuant to this reservation, to abandon any right to water which is appurtenant to or which may be exercised in connection with the Project.

8. Non-Residential Properties: Easement and Covenant to Share Cost. The Property may contain or be adjacent to certain Non-Residential Areas, including, without limitation, a Golf Course, Utility, and other Private Amenities, which are not dedicated to the public, in whole or in part. The Owners of Nonresidential Properties (other than the Developer) shall create a sub association (CPOA), and to the extent they use or benefit from the use of Common Areas and Facilities, be obligated to share in certain costs associated with the maintenance, repair, replacement, and insuring of said Common Area and Facilities, and shall be subject to pay their pro rata basis of the costs. The owners of the Nonresidential Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein.
9. Easement for Lake and Pond Maintenance and Flood Water. The Developer reserves for itself and its successors, assigns, and designees the Non-exclusive right and easement, but not the obligation to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, maintain, and replace pumps in order to provide water for the irrigation of any of the Areas of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris there from and fulfill their maintenance responsibilities as provided in this Declaration. The Developer's rights and easements provided in this Section shall be transferred to the Association at such time as the Developer shall cease to own any property subject to the Declaration, or such earlier time as Developer may elect, in its sole discretion, to transfer such rights by written instrument. The Developer, the Association, and their designees shall have an access easement over and across any of the Community abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonable necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Developer, the Association, and their designees, a perpetual, Non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within twenty (20) feet of water feature, lake, lake bed, ponds, and streams within the Project in order to (a) temporarily control flood and back water, and maintain water over, such portions of the Community; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams and wetlands within the Areas of Common Responsibilities; (c) maintain and landscape the slopes and banks pertaining to such lakes,

ponds, streams, and wetlands; and (d) enter upon and across such portions of the Community for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Developer or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfalls, or other natural disasters. For purposes of this section the easement width shall be measured from the centerline of a stream or the high water mark of a pond, lake, or other water feature.

C. MANAGEMENT

1. Board. The Association shall be managed by a Board which shall be comprised of at least three (3) and no more than nine (9) members. Until the termination of the Period of Developer's Control, Developer shall have the exclusive and irrevocable right to appoint all of the Members of the Board and their successors or replacements. Thereafter one Member shall be appointed by the Developer so long as he owns one Lot/Unit. At the first Annual Homeowners Meeting after the termination of the Period of Developer's Control, the remaining Members of the Board shall be elected by the Owners, one-half (½) shall be elected to serve two (2) years terms, and the remainder shall be elected for a one (1) year term. Thereafter, all Members shall be elected for two (2) year term.
2. Status and General Authority of Board. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Board name. The Board shall have, and is hereby granted, the following authority and powers, without the vote or consent of any Owners, Mortgagees, insurers or guarantors of any Mortgage, or any other Person (except as expressly and specifically required below):
 - a. Access. To access or enter into or upon any Lot/Unit to make repairs to do other work reasonable necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the Occupants.
 - b. Easements. To grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonable necessary or useful for the proper maintenance, operation or regulation of the Project.
 - c. Variances. To grant variances, set backs, and other deviations from the architectural and design guidelines and standards, as may be required from time to time because of topography, natural obstructions, hardship, aesthetic, environmental, or other just considerations.
 - d. Execute Documents. To execute and record, in behalf of all Owners or the Association, any amendment to the Declaration or Plat Map(s) which has been approved by the vote or consent necessary to authorize such amendment.

- e. Standing. To sue and be sued.
- f. Contracts. To enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- g. Transfer Interests in Real Property. To exchange, convey or transfer any interest in real property, so long as it has been approved by at least a Majority of Owners present, in person or by proxy, at a special meeting of the Association called for that purpose.
- h. Purchase of Property. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least a Majority of Owners present, in person or by proxy, at a special meeting of the Association called for that purpose.
- i. Addition of Property. To add real, personal or mixed property to the Project, so long as it has been approved by at least a Majority of Owners present, in person or by proxy, at a special meeting of the Association called for that purpose.
- j. Borrow Money. To borrow money and pledge assets of the Association, so long as it has been approved by at least a Majority of Owners present, in person or by proxy, at a special meeting of the Association called for that purpose.
- k. Joint Venture or Coop. After the Developer's control period to joint venture the ownership and/or operation of a Private Amenity, so long as it has been approved by at least a Majority of Owners present, in person or by proxy, at a special meeting of the Association called for that purpose.
- l. Promulgate Rules. To promulgate rules and regulations.
- m. Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Member of the Association or occupants not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board meetings.
- n. Assignment of Leasing of Open Common Area Parking Spaces. To assign or lease unassigned parking spaces.
- o. Right to Rent, Lease or Make Available. To rent, lease, or make available for any lawful purpose (including, without limitation, public meetings of governmental or quasi-governmental authorities), any portion of any clubhouse and other recreational facility or amenity within the Common Area on a short- term basis to

any Person approved by the Association for the exclusive use of such Person and such Person's family, guests and/or invitees, for a fee.

- p. Activity Cards. To require the use of a valid Activity Card, or the like, issued by the Association to access and use recreational facilities and Private Amenities.
 - q. Communications Facilities. To (1) construct, erect, install, place or maintain a radio, television or satellite antenna, or other aerial, dish, transmitting device or reception structure for a master satellite, television or radio system (the "antenna facilities"), should any such mater system or systems be utilized by the Association or Owners and require such fixtures; and (2) enter into an easement, lease or license agreement, or any combination thereof, with a utility company to provide space an access for communications holders for antennas, facilities and related equipment in the Common Areas, if such is not in violation of local, state or federal law and is for the benefit of the Owners.
 - r. Private Amenity. To enter into an easement, lease or license agreement, or any combination thereof, with a Private Amenity.
 - s. Utility Services. If a public utility service is deregulated, to provide, make available, or broker utility services to the Association Owners, Occupants, or others, provided such is not in violation of local, state or federal laws and is for the benefit of the Owners.
 - t. All other Acts. To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions on behalf of the Owners.
3. Delegation of Management Responsibilities. The Board may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than ninety (90) days. No such contract shall be for a term greater than one (1) year.
4. Liability of Board. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual intentional, gross negligence or misconduct.

5. Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership:

- a. Class A. The Class A Members shall be all members other than the Class B Members, including CDS Rainmakers – Golf, L.C. Class A voting is subject to:
- (1) One Vote Each Lot/Unit shall have one (1) vote regardless upon its Size and percentage of ownership interest in the Common Areas and Facilities.
 - (2) Subject To Assessment No vote shall be cast or counted for any Lot/Unit not subject to an Assessment.
 - (3) Multiple Owners When more than one (1) person or entity holds such interest in a Lot/Unit, the vote for such Lot/Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot/Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it.
 - (4) Sub-Association each Sub-Association will have the number if determined at the time of their inclusion in the Master Association as determined by the parties.
- b. Class B. The Class B Member shall be the Developer and any successor of Developer who takes title for the purpose of developing any portion of the Property, in whole or in part, including without limitation the sale of a Lot/Unit, and who is designated as such in a recorded instrument executed by Developer. The Class B Member shall be entitled to 10 votes per Lot/Unit owned. The Class B membership shall terminate, and Class B membership shall convert to Class A membership, upon the termination of the Period of Developer's Control. From and after the termination of the Period of Developer's Control, the Class B Member shall be deemed to be a Class A Member entitled to One (1) vote for each Lot/Unit owned. At such time, the Developer shall call a meeting in the manner described in the By Laws of the Association for special meetings, to advise the membership of the termination of Class B status and, if it has not already occurred, to schedule transition of the operation and management of the entire Project to the Association.

D. MAINTENANCE

1. Operation, Maintenance and Alterations. The Property shall be maintained with particular emphasis on the natural vegetation and zeriscape landscaping.
2. The Maintenance Responsibility of the Association. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to: (a) all Common Area; (b) all common area landscaping and other flora, parks, signage, structures, parking areas, and improvements, including any bike and pedestrian pathways and trails, situated upon the Common Area; (c) all water service facilities and drainage facilities within the Area of Common Responsibility, including lakes, ponds, streams and other water features; (d) all common sidewalks; (e) all perimeter walls, barriers, and fences constructed by the Developer which separate a

Lot/Unit, Common Area, golf course or any Private Amenity; (f) all common irrigation systems; (g) all streetlights; (h) any other item designated as a common responsibility or responsibility of the Association including, but not limited to: (I) Walking Trail; (j) Jogging Trail; (k) Equestrian Park; and (l) any property and facilities owned by the Developer and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property shall be identified by written notice from the Developer to the Association. The Developer's responsibility shall terminate at such time as Developer revokes its privilege of use and enjoyment by written notice to the Association. The Association may, but shall not be obligated to, delegate maintenance responsibility for Common Area within any Residential Area or Commercial Area to its RHOA or CPOA.

3. The Maintenance Responsibility of the Owner(s). Each Owner shall properly maintain his Lot/Unit in accordance with the Design Guidelines, Rules, Regulations, and any applicable use restrictions. If an Owner fails to properly perform his maintenance responsibility, the Association may perform such maintenance and charge the Owner with an Individual Assessment.
4. The Maintenance Responsibility of a Residential Area or Commercial Area. The Board may, but is not obligated to, require a RHOA or CPOA to maintain certain Common Area and Facilities within a particular Residential Area or Commercial Area, at its expense, and to allocate the cost thereof among the Members of such sub association. If any RHOA or CPOA fails to perform such maintenance, the Association may elect to perform and assess the costs against all Lot/Units within such area of Sub Association.
5. Garbage Removal. If available the Association shall contract privately or require a private contract for garbage pick-up and removal unless a public service is available. All garbage must be contained within a sealed plastic bag or other similar receptacle. Each Owner shall make his garbage available for pick up on the designated day each week. Garbage receptacles may not be left so as to be visible from any street or drive except for pick-up and then for a period not in excess of twenty-four (24) hours. If not available, each Owner shall be responsible to deliver their garbage to a common area as designated by the Developer or the Board of Directors.
6. Standard of Care – Generally. All of the property in the Project shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition.
7. Standard of Care – Landscaping. Priority is given to all natural vegetation and zeriscape landscaping consistent with the Developer's design and construction and so as not to detract from the uniform aesthetic and appearance of the Project.
8. Neglect. If the Board determines that an Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any

Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance and it shall be considered an Individual Assessment.

9. Changes to Areas of Personal or Common Responsibility. The Board may, in its sole discretion, add to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days prior written notice to the Owners.

E. COMMON EXPENSES

1. Common Expenses. Each Owner shall pay his Assessments to the Association subject to and in accordance with the procedures set forth below.
 - a. Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots/Units owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Lots/Units are sold or rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs. The Declarant shall, however, be responsible to cover any annual shortfalls, should the assessments and any other sources of revenues, not cover the established expenses and reserves for the applicable annual period.
 - b. Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants, including the maintenance of any real and personal property owned by the Association.
 - c. Creation of Assessments. Each Owner, by acceptance of a deed or other document of conveyance to a Lot/Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments.
 - d. Budget. At least sixty (60) days prior to the end of the fiscal year the Board shall prepare and deliver to the Owners a proposed Budget which:
 - (1) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.
 - (2) Basis. Shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated Common Expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, and replacement of those elements of the Common Areas that must be replaced on a

periodic basis, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

- e. Apportionment. The common profits, losses, and voting rights of the Project shall be distributed among and the common expenses shall be charged to the Owners based upon their percentages of ownership interest in the Association, which shall be of a permanent character and shall not be modified without the prior affirmative consent of at least 67% of the Total Vote. The percentage of ownership interest in the Association which, at any point in time, is appurtenant to the ownership of a Lot/Unit or other recognized property interest, shall be equal to Lot/Unit divided by the aggregate of all Lots/Units in the Project, including the number of Lots/Units assigned to a Private Amenity such as the golf course, and any commercial, or resort properties, with minor adjustments for the purpose of assuring that the total undivided ownership interest equals 100.0%.
- f. Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved by a vote of at least a Majority of the Owners received 30 days prior to the end of the current year. Notwithstanding the foregoing, however, if the owners disapprove the proposed Budget and Assessments or the Board fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new Budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the preceding year shall continue.
- g. Payment of Assessments. The Board has the sole authority and discretion to determine how and when the annual Assessments are paid.
- h. Personal Obligation of Owner. Owner are liable to pay all Assessments and Additional Charges due, provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot/Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.
- i. Equitable Changes. If the aggregate of all monthly payments on all of the Lots/Units is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments.

- j. Reserve Account. The Board shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.
- k. Statement of Assessments Due. Upon written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on his Lot/Unit. Failure to provide the certificate within thirty (30) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$25.00 for the issuance of such certificate.
- l. Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Board, the right to use any amenities in the Project may be suspended if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least thirty (30) days.
- m. Suspension of Right to Vote for Non-Payment. At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least thirty (30) days.

F. PRIVATE STREET AND TRAILS FUND

- 1. Private Street and Trails Fund. Each Owner of a Lot/Unit, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay the Association an annual charge for the Private Street and Trails Fund, and any other assessments or charges hereby levied. The Private Street and Trails Fund charge, and any other assessments or charges here levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot/Unit and shall be a continuing lien upon the property against which each such Private Street and Trails Fund charge and other charges and assessments are made.

- a. Basis of the Private Street and Trails Fund

- (1) The charge referred to shall be used to create a fund to be known as the "Private Street and Trails Fund," which shall be used for the repair and maintenance of the private streets as deemed necessary by the Board of the Homeowners' Association. Each such charge for the Private Street and Trails Fund shall be paid by the Owner of each Lot/Unit to the Association. The charge for the Private Streets and Trails Fund for the year of purchase shall be prorated at closing and shall be paid in advance, on or before the first day of the first month of each calendar year.

- (i) Any charge for the Private Street and Trails Fund not paid within thirty (30) days after the due date shall bear interest from the date at the lesser of: (a) the rate of eighteen percent (18%) per annum; or (b) the maximum rate permitted by law.
- (ii) The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien against the Owner's Lot/Unit. No owner may waive or otherwise escape liability for the Private Street and Trails Fund charge by non-use of the private street and/or trails or by abandonment of the Lot/Unit.
- (2) The initial amount of the charge for the Private Street and Trails Fund applicable to each Lot/Unit will be in an amount equal to the monthly Assessment for the Lot/Unit. All other matters relating to the charge for the Private Street and Trails Fund and the collection, expenditures, and administration of the Private Street and Trails Fund shall be determined by the Developer, and after the Control Transfer Date, by the Board, subject to the provisions hereof.
- (3) The Homeowner's Association, at anytime after Developer no longer functions as the Board of the Association, shall have the right at any time, with the majority vote of all Association Members, to adjust or alter the charge for the Private Street and Trails Fund to meet reasonable operating expenses and reserve requirements. Under no circumstance will the reserves for the Private Street and Trails Fund fall below one year's annual assessment.
- b. Creation of Lien and Personal Obligation. In order to secure the payment of the charge for the Private Street and Trails Fund, and other charges and assessments hereby levied, each Member of the Homeowners' Association grants to the Homeowners' Association a contractual lien on the Member's Lot/Unit which may be foreclosed pursuant to law and in the manner in which the laws of the State of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Homeowners' Association shall be entitled to reasonable attorney's fees, and costs of foreclosure. Following any such foreclosure, each occupant of any such Lot/Unit foreclosed and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in any action of forcible entry and detainer. In the event of nonpayment by such member of any Private Street and Trails Fund charge or other charges or assessment levied hereunder the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein,

upon thirty (30) days' prior written notice thereof of such non paying member, may exercise all other rights and remedies available at law or in equity.

- c. Notice of Lien. In addition to the right of the Association to enforce the charge for the Private Street and Trails Fund or other charges or assessments levied hereunder, the Association may file a claim or lien with the county clerk against the Lot/Unit of the delinquent Member by recording a notice ("Notice of Lien") setting forth:

- (1) The amount of the claim of delinquency
- (2) The interest thereon.
- (3) The costs of collections that have accrued thereon, including attorney's fees incurred.
- (4) The legal description and street address of the Lot/Unit against which the lien is claimed; and
- (5) The name of the Member/Owner thereof.

Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Member of a reasonable fee as fixed by the Board to cover the preparation and recordation of such release of lien instruments.

- d. Liens Subordinate to Mortgages. The lien described in this Article shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trust or plan, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot/Unit affected hereby, and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot/Unit, who obtains title to such Lot/Unit pursuant to the remedies provided in the deed of mortgage or, by judicial foreclosure, shall take title to the Lot/Unit free and clear of any claims for unpaid charges for the Private Street and Trails Fund or other charges or assessments levied against such Lot/Unit which accrued prior to the time such holder acquired title to such Lot/Unit. No sale or transfer shall relieve such holder from liability for any charges for the Private Street and Trails Fund or other charges or assessments thereafter becoming due, or from the lien thereof. Any other sale or transfer of a Lot/Unit shall not affect the Homeowners' Association lien for charges for the Private Street and Trails Fund or other charges or assessments. The Homeowners' Association shall make a good faith

effort to provide each such mortgagee thirty (30) days' advance written notice of the Association's proposed foreclosure of lien, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent charges for the Private Street and Trails Fund or other charges or assessments upon which the proposed action is based, provided, however, that the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Associations pursuant to the provisions of this Article.

- e. Purposes of the Private Street and Trails Fund Charges. The charges levied by the Association through its Board shall be used exclusively for the purpose of maintaining and repairing the private streets and trails to the extent deemed necessary by the Association. It is understood that the judgment of the Board of the Association as to the expenditures of said funds shall be final and conclusive so long as such judgment is exercised in good faith.
- f. Handling of Private Street and Trails Funds Charges. The collection and management of the Private Street and Trails Fund charges, or other charges or assessments levied hereunder shall be performed by the Board of the Association. The Board shall maintain separate special accounts for these funds, and members shall be provided annual information on the fund.
- g. Developer's Rights to Use Private Streets. Developer shall have and hereby reserves the right to reasonable use of the private streets and trails in connection with the promotion and marketing of Lot/Units. Further, Developer may permit prospective purchasers of such Lot/Units who are not Owners or Members of the Association, to use the private streets and Trails at reasonable times and in reasonable numbers.
- h. Retention of Funds. Under no condition may any funds deposited to the Private Street and Trails Fund be diverted to any other operating expenses of either the Developer or the Association. Said funds must be used for street and trails repair, maintenance and snow removal.
- i. Abatement of Assessment. Neither the Developer nor the Association shall have the authority to discontinue the charge for the Private Street and Trails Fund regardless of the amount of the funds accumulated, it being anticipated that the entire assessment be paid in full and deposited into the Private Street and Trails Fund.

G. COLLECTIONS

- 1. Collection of Assessments

- a. Time is of the Essence. Time is of the essence and all Assessments shall be paid promptly when due.
- b. Default Interest. Any Assessments not paid within sixty (60) days after the due date shall bear interest from the due date at the lesser of: (1) the rate of eighteen percent (18%) per annum or (2) the maximum rate permitted by law.
- c. Late Fee. Any Assessment not paid within thirty (30) days of its due date shall incur a late charge of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater.
- d. Filing of Notice of Lien. If any Assessment is delinquent, then a notice of lien evidencing the security interest of the Association may be filed with the County Clerk for Lincoln County, New Mexico setting forth:
 - (1) The amount of the claim of delinquency,
 - (2) The default interest due thereon,
 - (3) The costs of collection which have accrued thereon, including attorneys fees incurred,
 - (4) The legal description of the property and street address, if any, of the Lot/Unit against which the lien is claimed, and
 - (5) The name of the Owner thereof.

Such Notice of Lien shall be signed and acknowledged by an officer or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover preparation and recordation of such release of lien instrument.

- e. Liens Subordinate to Mortgages. The lien described above shall be considered subordinate to any mortgage recorded prior to the recording of a notice of lien, and each such mortgagee who obtains title to such Lot/Unit pursuant to the remedies provided in the deed of trust, mortgage or by judicial foreclosure shall take title to the Lot/Unit free and clear of any claims for unpaid Assessments or other charges against such Lot/Unit which accrued prior to the time such holder acquired title to such Lot/Unit. No such sale or transfer shall relieve such holder from liability for any Assessments or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot/Unit shall not affect the Association's lien for Assessments or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee thirty (30) days' advance written notice of the Association's proposed

foreclosure of lien described above, which notice shall be sent to the nearest office of such mortgagee by prepaid U.S. Registered or Certified Mail, return receipt requested, and shall contain a statement of delinquent Assessments or other charges and assessments upon which the proposed action is based, provided the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant hereto.

- f. Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed, or both.
- g. Foreclosure of Lien as Mortgage. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest in the Property. The sale or foreclosure shall be conducted in the same manner as foreclosures of mortgages or trust deeds, or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot/Unit during the pendency of the foreclosure action. The Association, in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Lot/Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.
- h. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot/Unit.
- i. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

H. MORTGAGEE AND LENDER PROTECTION

- 1. Mortgagee Protection. The lien or claim against a Lot/Unit for unpaid Assessments levied by the Board or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date a notice of lien securing said

debt is recorded in the office of the County Clerk of Lincoln County, New Mexico, subject to the following:

- a. Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot/Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Lot/Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Lot/Unit or the exercise of a power of sale available there under shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot/Unit from liability for these Assessments.
- b. Books and Records Available for Inspection. The Board or the Association shall make available to all Owners, Mortgagees and Lenders, and to holders, insurers or guarantors of any Mortgage current copies of the Governing Documents, as well as the books, records, and financial statements of the Association. The term "available", as used in the paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.
- c. Right to Financial Statements. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statements for the immediately preceding fiscal year. Any financial statements requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.
- d. Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board or the Association shall provide or be deemed to provide hereby that either party may terminate the contract with or without cause upon at least thirty (30) days prior to written notice to the other party thereto.
- e. Eligible Mortgagee Designation. Upon written request to the Board or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Lot/Unit Number or address of the Property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

- (1) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot/Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.
 - (2) Delinquency. Any delinquency in the payment of Assessments owned by an Owner whose Lot/Unit is subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains insured for a period or sixty (60) days.
 - (3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Associations.
 - (4) Consent Required. Any proposed action that which would require the consent of a specified percentage of Eligible Mortgagees.
- f. No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Lots/Units shall not be subject to any right of first refusal or similar restrictions.
2. Lists of Lot/Unit Owners, Eligible Mortgagees and Eligible Insurers or Guarantors. The Board shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such Person, and the Lot/Unit which is owned by him; (b) the name of each Person who is an Eligible Mortgagee, the address of such Person, and the Lot/Unit which is encumbered by the Mortgage held by such Person; and (c) the name of each Person who is an Eligible Insurer or Guarantor, the address of such Person, and the Lot/Unit which is encumbered by the Mortgage insured or guaranteed by such Person. In the event of any transfer of a fee or undivided fee interest in a Lot/Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Clerk of Lincoln County, New Mexico. The Board may for all purposes act and rely on the information concerning Lot/Unit ownership in its records or, at its option, the records of said county Clerk. The address of any Owner shall be deemed to be the address of the Lot/Unit owned by such person unless the Board is otherwise advised in writing.

I. AMENDMENTS

1. Amendment. This Declaration may be amended as follows:
 - a. Declarant. No amendment may be made to this Declaration or subdivision Plat Map(s) without the prior written consent of the Declarant or his written waiver of this right.
 - b. Consent of Eligible Mortgagees. The consent of Eligible Mortgagees shall be required as follows:

- 1) At least sixty-seven percent (67%) of the Eligible Mortgagees shall be required for any amendment that would terminate the legal status of the Project.
- 2) At least fifty-one percent (51%) of the Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following:
 - (a) voting rights;
 - (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessments liens;
 - (c) reductions in reserves for maintenance, repair, and replacement of the Common elements;
 - (d) insurance or fidelity bonds;
 - (e) limitations and restrictions on the right to use of the Common Areas;
 - (f) responsibility for maintenance and repairs;
 - (g) the boundaries of any Lot/Unit;
 - (h) the percentages of ownership interest in the Common Areas;
 - (i) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot;
 - (j) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and
 - (k) the requirement that the Project be professionally managed rather than self managed.

Any addition or amendment shall not be considered material for purposes of this Paragraph (b) if it is for the clarification only or to correct a clerical error.

Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map, or the termination of the legal status of the Project, if such amendments, or such termination, are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or substantial Obsolescence.

Anything to the contrary notwithstanding, if any financing or the guaranty of any financing on a Lot/Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association

(FNMA), Government National Mortgage Association (GNMA) or the Veterans Administration (VA), no material amendment, as defined above, to the Declaration, or merger, may become effective, as to said Agencies, without their prior express written consent.

- c. Consent of the Owners. Subject to the restrictions set forth in subparagraphs (a) and (b) above, the affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or subdivision Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of "Eligible" Mortgagees is required for such amendment, that such approval has been obtained.
- d. Variances. Variances to the architectural and design guidelines need not be recorded unless such recordation is required independently by state law.

J. CONSENT IN LIEU OF VOTE

1. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining with or without a vote at a meeting called for such purpose, consents in writing to such proposed act or transaction from Owners who collectively hold the required percentage, subject to the following:
 - a. Ninety-Day Limit. All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained; and
 - b. Change in Ownership. Any change in ownership of a Lot/Unit, which occurs after consent has been obtained from the Owner having an interest therein, shall not be considered or taken into account for any purpose.

K. DUE PROCESS

1. Due Process Requirements; Notice of Hearing; Opportunity to be Heard. In the event of a claimed violation of the Governing Documents, no fine, citation, suspension or penalty shall be imposed without the Board first giving the alleged violator written notice of the violation and an opportunity to be heard by the Board provided, however, nothing herein shall be construed to prevent the Board from (a) immobilizing, towing or impounding a motor vehicle in violation of this Declaration or the parking rules and regulations for which no additional notice is required, or (b) making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice to the Owner or Occupant and giving them an opportunity to be heard.

L. DEVELOPER'S RIGHTS

1. Developer's Sales Program. Notwithstanding anything to the contrary, until the termination of the Period of Developer's Control, neither the Owners, Association nor the Board shall interfere or attempt to interfere with the completion of improvements and sale of the remaining Lot/Unit, Memberships, or Property, and the Developer shall have the following rights in furtherance of any sales, promotions, or other activities designed to accomplish or facilitate the sale of all Lots/Units or Property owned by Developer:
 - a. Sales Office and Model Lot/Unit. Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots/Units, Buildings or Dwellings at any one time. Such office and/or models may be one or more of the Lots/Units, Buildings or Dwellings owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing;
 - b. Promotional. Developer shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.
 - c. Common Area Use. Developer shall have the right to use the Common Areas of the Project, golf course and Private Amenities to facilitate sales.
 - d. Relocation and Removal. Developer shall have the right from time to time to locate or relocate any of its sales offices, models, signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the sale of all of Developer's Lots/Units or interest in the Property, Developer shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Developer's sales effort.
2. Limitation on Improvements by Association. Until the sale of all the Developer's Lots/Units or interests in the Property, neither the Association, Board, nor Owners shall, without the written consent of Developer, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Developer, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Developer.
3. Withdrawal of Property. The Developer reserves the right to amend this Declaration at any time so long as it holds an unexpired option to expand the Project pursuant hereto, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Project then owned by the Developer, from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Project desired to be effected by the Developer, provided

such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Project.

4. Developer's Reservation of Rights. Developer reserves for itself and its assigns the right to vary the timing, mix, type, use, style, and number of Lots/Units, the nature of the Lots/Units, the materials and other such details of construction in adding phases to this Declaration. If additional uses, such as, by way of explanation and not limitation, light industrial or additional commercial, are permitted by zoning, Developer shall have the right to add such uses to this Declaration.
5. Developer's Rights Assignable. All of the rights of Developer under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots/Units or Buildings in the Project title to which is vested in Developer shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Developer (in its capacity as Developer) herein.
6. Transfer of Management and Control. At the expiration of the Developer's Period of Control, the Developer shall cause an instrument transferring control of the ARC and the Board to be filed or record in the office of the Clerk of Lincoln County, New Mexico. The instrument shall include the "Control Transfer Date."
7. Certain Provisions Applicable to Developer. Notwithstanding any other provisions herein contained, for so long as Developer continues to own any of the Lots/Units, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Developer from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot/Unit owned by Developer.
 - a. Developer specifically disclaims any intent to have made any warranty or representation in connection with the Project or the Declaration except as specifically set forth herein or in any agreement for sale of a Lot/Unit, and no person shall rely upon any warranty or representation not so specifically made therein.
 - b. No amendment may be made to the Declaration without the written consent of Developer so long as Developer retains the ownership of a Lot/Unit or Property within the Project.
 - c. Normal construction activities and parking in connection with the building of Improvements on a Lot/Unit shall be considered a nuisance or otherwise prohibited by this Declaration. Supplies of brick, block, lumber and other

building materials shall be piled only in such areas as may be approved by the Developer or, at the end of Developer's Period of Control, the Association.

- d. Developer is not obligated to pay any Assessments on any Lot/Unit until the earlier of the following: (1) New Mexico law requires or (2) such time as a certificate of occupancy has been issued thereon and it has been sold or rented.

M. MISCELLANEOUS

1. Agent for Services of Process. After the termination of the Developer's Period of Control, the President of the Association shall be the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent shall be John Underwood. The Registered Office of the Registered Agent is 1221 Mechem, Suite 5, Ruidoso, New Mexico, 88345.
2. Interpretation. To the extent New Mexico law is inconsistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions that precede the sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof.
3. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot/Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot/Unit shall comply with, and all interests in such shall be subject to the terms of this Declaration, and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot/Unit in the Project, the party acquiring such interest consents to and agrees to be bound by, each and every provision of this Declaration.
4. Enforcement and Right to Recover Attorney's Fees. The Association, Board, or any aggrieved Owner may take action, at law or in equity, to recover damages, obtain injunctive relief, or enforce the terms, covenants or conditions of the Governing Documents. Should the Association, Board or Owner be required to take action to enforce the Governing Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

5. Security. Portions of the private streets may have controlled, or otherwise limited, access for the construction and maintenance of security entrances. Owners, occupants, family members, guests, visitors and invitees shall cooperate with the security policies and procedures.

All emergency vehicles shall have precedence in accessing the Property without condition, hindrance or delay.

The Developer and/or Association shall have the right from time to time, but not the duty, to (a) install or construct electronic entrance security devices and gates; and (b) install electronic security devices on the perimeter fencing, subject to the approval of the ARC.

The Association may, but shall not be obligated to maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Board shall in any way be considered insurers or guarantors of security within the Project. Neither the Association nor the Board shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Occupants, their guests and invitees, as applicable, acknowledge that neither the Association nor the Board represent or warrant that any security measures undertaken will insure their safety. All Owners and Occupants, their guests and invitees, acknowledge and understand that the Association and Board are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Board have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

6. Use of the Term "CDS", "Bridge" or "Rainmakers". No person shall use the term "CDS", "Bridge" or "Rainmakers" or any derivative thereof in any printed or promotional material without the prior written consent of the Developer. However, Owners may use the term "Rainmakers" in printed or promotional matter where such term is used solely to specify that particularly property is located within the Project.
7. Recycling Programs. If and when reasonably available, the Board may establish a recycling program and recycling site within the Project, and in such event all Owners and Occupants shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or site is designed to accommodate. The Association may, but shall have no obligation, to purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

8. Provision of Services. The Association may elect to provide goods, products, wares, services and facilities for Owners and Occupants, as well as their guests, lessees and invitees, and shall be authorized to enter into contracts or other similar agreements with other entities, including Developer, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board may charge additional use and consumption fees for such goods, products, wares, services and facilities. By way of example, some services and facilities which may be provided include snow removal, landscape maintenance, pest control service, cable television service, internet services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board may modify or cancel existing services or facilities at any time or provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association.
9. Change of Use of Common Area. The Board may change the use of any portion of the common Area provided any new use shall be for the benefit of the Owners and not inconsistent with the then effective Master Plans; provided, however, any change in use of the Common Area shall be subject to approval by the Developer as long as it owns a Lot/Unit or any of the Property.
10. Relations with Adjacent Projects. Adjacent to or in the vicinity of the Project are projects that have been or, in the future, may be developed as independent residential, commercial, resort or mixed-use developments, or Private Amenity (including, but not limited to, rental apartments, life care facilities and retail or other business areas). The Developer or the Association may enter into reciprocal or cross easements or a Covenant to Share Costs agreements with such adjacent or nearby projects. Unless annexed in the manner set forth herein, the owners of real property adjacent to or nearby the Property shall not be entitled to vote on Association matters, and shall not be subject to Assessments or other conditions or restrictions set forth in this Declaration.
11. Liability of Owners and Occupants for Damages. Owners or Occupants shall be liable for damages to person or property in the Project caused by their negligence.
12. Duration. These restrictive covenants shall run with the land and shall be binding upon the owners thereof, their heirs, successors and assigns for a period of forth (40) years, after which time said covenants shall be automatically extended for successive periods of ten (10) years.
13. Conflict. In the event of any conflict, incongruity or inconsistency between the provisions of this Declaration and the provisions of the New Mexico Law, the latter shall in all instances govern and control.
14. Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference.

<u>Exhibit No.</u>	<u>Description</u>
1	General Use Standards and Restrictions
2	Residential Use Standards and Restrictions
3	Sub Associations
4	Architectural Review and Guidelines
5	Design Guidelines
6	Application to the ARC
7	Insurance
8	Destruction and Eminent Domain
9	Activity Cards
10	Expansion of the Project
11	Conversion of Land
12	Golf Course and Private Amenities
13	Combination of Lots/Units
14	By-Laws
15	Legal Description
16	Additional Land
17	Convertible Land
18	Common Area

15. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Clerk of Lincoln County, New Mexico.

EXECUTED this 1st day of JUNE, 2006.

Developer and Acting Board of Directors

CDS RAINMAKERS - LAND, L.C.

By: [Signature]
Title: Managing Member

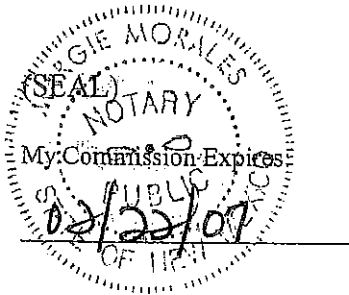
ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss.
COUNTY OF LINCOLN)

On the 1st day of May, 2006, DANUEL R. STANGER personally appeared before me DANUEL R. STANGER, who by me being duly sworn, did say that he/she is the manager of CDS RAINMAKERS - LAND, L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said

company pursuant to the resolution of its members or its Articles of Organization, and said
DANIEL R. STANGER duly acknowledged to me that said company executed the same.

Margie Morales
Notary Public



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EXHIBIT "1"
GENERAL USE STANDARDS AND RESTRICTIONS FOR ALL PROPERTIES

1. Religious and Holiday Displays. Owners and Occupants may display religious and holiday signs, symbols, and decorations on their Lot/Unit, subject to the rights of the Board to adopt time, place, and manner reasonable restrictions regulating displays which are visible from outside of the Lot/Unit.
2. Activities Within Lot/Units. No rule shall interfere with the activities carried on within the confines of a Building, except they must be appropriate to the area, be it residential, commercial, resort or mixed, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of other Occupants, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Lot/Unit, or that create unreasonable sounds of annoyance for the neighborhood or community.
3. Allocation of Burdens and Benefits. No rule shall alter the basis for allocation of Common Expenses among the Lot/Units or rights to use the Common Area to the detriment of any other Owner. Nothing in this provision shall prevent the Association from changing the use of the Common Area, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who either, abuse the Common Area, violate rules or this Declaration, or fail to pay Assessments.
4. Alienation. No rule shall prohibit or require consent of the Association or Board for the leasing or transferring of any Lot/Unit unless they are in direct violation of this Declaration.
5. Reasonable Rights to Develop. No rule or action by the Association or Board shall impair or attempt to impair Developer's right to develop the Property in accordance with the Master Plans, or any adjoining property that Developer has planned for expansion within this Association.
6. Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Lot/Unit. There shall be no requirements concerning who may own a Lot/Unit, it being intended that they may and shall be owned as any other property rights. This is a mixed-use community and, as such, each Lot/Unit and Common Area shall only be used in a manner consistent with the residential, commercial or resort area in which it is located.
7. Joint, Common or Shared Utility Easements. The Developer, for itself and its successors and assigns, hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with owners or developers of adjoining properties for any and all reasonable and necessary utility easements or rights

- of way for gas, water, electrical, sewer, Private Amenities and other similar systems, over, under, across or through the Project.
8. Member's Easements and Rights of Way. Each Owner has the right and non-exclusive easement to use and enjoy the Common Area and Common Area Facilities, not including the golf course. Such right and easement shall be appurtenant to and shall pass with the title to every Lot/Unit, subject to the right of the Association to (a) limit the number of guests and residents; (b) suspend the voting privileges and right to use the amenities; and (c) dedicate or transfer all or any part of the Common Area to any public agency, public authority or utility (with their approval) for the purpose of regulating transportation, maintaining the roadways, or providing utilities, and other similar or related purposes. During the Period of Developer's Control, any such dedication or transfer shall be effective only if approved in writing by the Developer.
 9. Signage. Posting of signs of any kind, including real estate signs, posters, circulars, campaign signs, political signs, and bills, except those required by law or permitted by the Board or ARC, in, on or about the Project is prohibited.
 10. Subdividing Lot/Units. The subdividing of a previously platted Lot/Unit into two or more Lots/Units is prohibited, except the Developer may subdivide or change the boundary lines of any Lot or Lots which it owns, without additional consent.
 11. Time Sharing. Operation of a timesharing, fractional ownership or similar program whereby the right to exclusive use of a Lot/Unit rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited, except in a designated Time Share Residential Area.
 12. Wildlife. Capturing, trapping or killing wildlife within the Property is prohibited, except in circumstances posing an imminent threat to the safety of persons or pets using the Property, or when authorized and supervised by the Developer and Board in accordance with a game management program; provided, the Developer or CDS Rainmakers Golf, L.C. shall have the right to remove water fowl from any golf course.
 13. Prohibited Activities. Activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Property or which result in unreasonable levels of sound or light pollution are prohibited.
 14. Hazardous and Toxic Materials. Unless allowed by law, the disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials anywhere within the Property is prohibited.
 15. Electronic and Radio Transmitters. Unless allowed by law, no electronic or radio transmitter of any kind, other than garage door or gate openers, shall be located or operated in or on any Improvement or on any Lot/Unit without the written consent of the Board, which consent shall not be unreasonably withheld, conditioned or delayed. No Owner or Occupant may use any electronic equipment or signals in the Common Area or

their Lot/Unit or motor vehicle if such signal interferes with any common signals, security gates, or systems of the Association or any other Owners.

16. Garage Sales. No garage, patio, porch or lawn sale shall be held in, on, or about any Lot/Unit without the prior consent of Developer or the Board.
17. Dust and Debris. Behavior or activities which cause erosion on unreasonable amounts of dust or pollen are prohibited, normal construction activities are exempted however.
18. Dog Runs and Pens. Dog runs and animal pens of any kind are prohibited, except as approved in writing by the Developer, Board ARC. In no case will dog runs or animal pens be visible to the public from the street, any common area amenities, or golf course.
19. Exterior Lighting. Where exterior street lighting is provided, driveway reflectors will not be permitted, nor is any offensive or excessive exterior lighting or directional glare on any Lot/Unit allowed, unless necessary for public safety purposes or Common Area facilities or amenities.
20. Storage Sheds. Temporary or permanent storage Buildings or sheds, whether prefabricated, metal or of any other construction whatsoever, which are visible from the Golf Course, Common Area or an adjoining Lot/Unit are prohibited, unless authorized in writing by the Developer or, at the end of the Developer's Period of Control, the Board or the ARC; provided, however, any storage sheds (or other ancillary structure) must be similar in design and construction to the principal Dwelling or Building. All metal must be painted and be non reflective.
21. Storing of Personal Property. The storing, in such a manner as to be visible from Common Area or another Lot/Unit, or any personal property, furniture, fixtures, appliances, machinery, equipment, vehicles or other goods or chattels which are not in active use shall be prohibited; provided, however, this restriction shall not apply to the property of the Golf Course, Developer, Association, or any builder (to the extent approved by the Developer). Notwithstanding the foregoing, a gazebo, pergola, or similar structure may be permitted within the rear yard of a Lot/Unit if approved in writing by the Developer or Board. Firewood must be stacked in an area designated by the Developer, Board, or ARC.
22. Patio Furniture and BBQs. Outdoor patio furniture is allowed, although it must be maintained in a clean, tidy and neat manner. Bicycles, tricycles, motorcycles, household furniture and furnishings, equipment, machinery, tools, supplies, boxes, storage containers or other items of personal property may not be stored so as to be visible from the street, Common Area, or another Lot/Unit.
23. Speed Limits. Driving within the Project faster than conditions allow or the speed limits established by the Board, is prohibited.

24. Mail and Newspaper Boxes. Mail, newspaper or other similar boxes installed or constructed on any Common Area must be approved by the Developer and in accordance with U.S. Postal guidelines.
25. Fires and Incinerators. The burning of brush, trash or other materials; bonfires or incinerators; and open fires are prohibited unless approved by the Board.
26. Landscaping. Natural vegetation and zeriscape landscaping is mandatory. Grass areas shall not exceed 800 sq. ft., and shall require subterranean irrigation. Invasive plants or noxious weeds will not be allowed. Trees which require a large amount of water will not be allowed. A list of all allowed and disallowed plants and trees will be maintained by the ARC and all landscaping must be approved by the Developer, Board or ARC.
27. Water Collection System. Each lot when developed shall include an integrated rainwater collection system and the design and placement of same shall be approved by the Developer, Board or ARC.
28. Diseases and Insects. The creation or allowance of a condition which is likely to or may induce, breed, or harbor infectious plant diseases or noxious insects is prohibited.
29. Firearm, Fireworks and Graffiti. The use or discharge of firearms, incendiary devices, (fireworks), or the painting of graffiti within the Project is prohibited. For purposes of this subsection the term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.
30. Improper Sight Distances and Unsafe Conditions. Fencing, walls and landscaping which impair or obstruct safe sight on Lot/Units or property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners is prohibited.
31. Energy Conservation Equipment. The construction or installation of solar energy collector panels, other energy conservation equipment or attendant hardware is prohibited without the prior written consent of the Board, which shall not be unreasonably withheld, conditioned or delayed.
32. Insurance. Doing or keeping anything in, on or about the Project, or any part thereof, which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Project over what the Board, but for such activity, would pay, is prohibited.
33. Laws. Doing or keeping anything in, on or about the Project, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body is prohibited.

34. Damage or Waste. Causing, committing or allowing damage or waste to the Common Area and Facilities, golf course or any Private Amenity is prohibited.
35. Structural Alterations. Structural alterations to the Common Area or Facilities, without the prior written consent of the Board, is prohibited.
36. Irrigation Systems. No irrigation system of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals, or other waterways within the Property shall be installed, constructed, or operated within the Property, without the prior written consent of the Developer and after the end of the Period of Developer's Control the Board or the ARC. All irrigation systems are subject to approval of the Developer and after the end of the Period of Developer's Control, the Board or ARC. Subterranean irrigation and drip irrigation only shall be allowed and must be approved by Board or ARC prior to installation.
37. Tree Removal. No trees with a caliper of eight inch (8") or larger shall be removed, except for (a) diseased or dead trees; and (b) trees needing to be removed for home or driveway construction, without the prior written consent of the Developer or, at the end of the Period of Developer's Control or ARC.
38. Lakes, Ponds, Streams and Bodies of Water and Artificial Water Features. All lakes, ponds, streams and bodies of water and Artificial Water Features within the Property, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, swimming, motorized boating, playing, or use of personal flotation devices, shall be permitted. This subsection shall not apply to or prohibit use by the Developer of lakes, ponds or streams within the Property. Neither the Developer nor the Association shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams or other bodies of water within the Property. Nothing shall be done which disturbs or potentially disturbs wetlands within the Property in any manner. No dredging or filling shall be undertaken on any property adjacent to any body of water or wetland.
39. Playground and Equipment. Playgrounds or other play areas or equipment furnished by the Developer or the Association, or erected within the Property, shall be used at the risk of the user, and neither the Developer nor the Association shall be held liable to any Person for any claim, damage, or injury to person or property occurring thereon or related to use thereof.
40. Dumping. No person may dump grass clippings, leaves or other debris in the Common Area, golf course or on any other Lot/Unit or Private Amenity.
41. Motorized Vehicles. The operation of motorized vehicles on pathways or trails maintained by the Association is prohibited; however, golf carts may be operated on cart paths and pedestrian paths intended for such purposes.

42. Archaeological or Protected Sites. Entering Archeological or Protected Sites as designated on the Plat Map without the written consent of the Association is not allowed. Interfering with, disturbing, disrespecting, defacing, altering, damaging or causing waste to such Archeological or Protected Sites is prohibited.
43. Equestrian, Walking and Jogging Trails. Interfering with or obstructing the use or intended purpose of the Equestrian, Walking or Jogging Trails or damaging said amenities is prohibited. Motorized vehicles shall not be used on these trails, except for golf carts, where said trails are intended for this purpose.
44. Nuisance. The creation or maintenance of a nuisance is prohibited. For purposes of this section, a nuisance is behavior, an activity or condition which annoys, bothers or disturbs other Occupants or interferes with their right to the peaceful and quiet enjoyment of the Property. The violation of any use restriction set forth herein shall be considered a nuisance *per se*. Because of the equestrian track, horses, absent special circumstances, shall not be considered a nuisance.
45. Storage and Parking of Motor Vehicles. The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:
 - a. Traffic Rules and Regulations. Any traffic and parking rules and regulations as may be adopted by the Board from time to time;
 - b. Recreational Commercial and Oversized Vehicles. Recreational, Commercial, and Oversized vehicles must be parked in an area designated for such and approved by the Developer or, at the end of the Period of Developer's Control, the Board or ARC; provided, however, no eighteen (18) wheeler trucks and trailers, or their equivalent, are allowed to be parked or stored on the Project.
 - c. Streets. No overnight parking is allowed on the streets within the Project;
 - d. Obstacles. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, minivan, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Building, Lot/Unit, structure, or driveway, or so as to create an obstacle or potentially dangerous condition;
 - e. Repairs and Restoration. No occupant shall repair or restore any vehicle of any kind in or on the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Disabled or inoperable motor vehicles must be stored so as not to be visible from the street, Golf Course, Common Area or another Lot/Unit.
 - f. Guest Parking. Areas designated as "Guest" or "Visitor" parking are for the use and benefit of visitors, guests and invitees, and are not to be used by Owners or Occupants.
 - g. Handicapped Parking. Areas designated as "Handicapped" parking are for the use and benefit of the handicapped.

- h. Impounding and Towing. A motor vehicle parked in violation of this Declaration or rules adopted by the Board or ARC may be impounded or towed without further notice and at the Owner's sole risk and expense.
 - i. Special Functions. Upon prior approval of the Board, guests, visitors and invitees may be permitted to park their vehicles on the streets within the Property at reasonable times before, during, and after special functions.
46. Satellite Dishes, Antenna and Aerials. Up to two satellite dish antenna having a diameter of not more than 24" each, and blending in color with the surrounding landscape, may be installed adjacent to any residence and integrated with the structure and surrounding landscape. Any other dish location and screening shall be reasonably determined by the Board so as not to impair reception and to ensure that the satellite dish is not visible, insofar as that is reasonably possible from the street.
47. Domestic Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project, except in designated areas. Up to two (2) domestic pets per Lot/Unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, and pets must be kept within safety fences on lots, or if off premises they must be kept on a leash. Owners must abide by all pet rules and regulations adopted by the Board from time to time, and local ordinances. Pets may not create a nuisance. The following acts of a dog shall constitute a nuisance: (a) it causes damage to the property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive, continuous or untimely fashion; (f) it molests or harasses passers by lunging at them or chasing passing vehicles; (g) it attacks people or other domestic animals; or (h) it otherwise acts so as to bother, annoy or disturb other reasonable occupants or interferes with their right to the peaceful and quiet enjoyment of their property.
48. Environmental Issues – Compliance with law – Licenses and Permits. Each Owner and Occupant shall comply with all environmental laws governing the use of the property, and obtain and maintain all necessary licenses and permits required by any applicable governmental body or agency having jurisdiction over the premises, and shall pay the fee or charge imposed for issuance of any such license or permit. Each Owner or occupant shall renew any of these licenses and permits in accordance with the rules, codes, statutes or ordinances. If an Owner or Occupant breaches any environmental laws, or if the presence of hazardous material on the premises caused or permitted by Owner results in contamination of the Property, or if contamination of the Property by hazardous material otherwise occurs for which Owner is legally liable to Association for damage resulting from the same, then Owner by virtue of accepting a deed or other document of conveyance to a Lot/Unit and/or any occupant, by virtue of his taking possession of a Lot/Unit, shall be considered to have agreed to give the Board access to his property to investigate the violation and to indemnify, defend and hold Association harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses

(including, but not limited to, diminution in value of the Property, damages for the loss or restriction or use of rentable or useable space or of any amenity of the premises, damages arising from any adverse impact on marketing of the Property, and sums paid in settlement of claims, attorney, consultant fees and expert fees) which arise. This indemnification includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of hazardous material present in the soil or ground water on or under the Property. Without limiting the above, if the presence of any hazardous material on the Property caused or permitted by an Owner or occupant results in any contamination of the Property, said Owner or occupant shall promptly take all actions at his sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such hazardous material to the Property, provided that the Association's written approval of such action or actions shall first be obtained, which approval shall not be unreasonably withheld, delayed or conditioned so long as the action would not potentially have any material adverse long term or short term effect on the Property. As used in this section, the term "hazardous material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of New Mexico or the United States Government. The term "hazardous material" includes, but is not limited to, any material or substance which is (a) defined as a "hazardous waste" or other hazardous material or substance under any of the laws of the State where the Property is located, (b) petroleum, (c) asbestos, (d) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control act, (e) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, as amended, or (f) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

49. Garbage and Refuse Disposal. The Property shall not be used or maintained as a dumping ground for rubbish, trash, garbage or other waste (collectively, "Trash"). All Trash shall be kept at all times in sanitary containers. All Trash containers shall be kept in sanitary condition. No Trash containers, unsightly material or objects are to be stored on any portion of the Property in view of the general public, except in designated areas. Disposal of any oil, gas, or lubricants, and the storage or disposal of other hazardous materials anywhere within the Property is prohibited. If any Owner shall abuse the community trash containers provided in the Common Areas, the Association, shall be empowered to (a) require such Owner to maintain at his own expense a separate garbage removal system in an area designated by the Association, or (b) charge such Owner such additional amount for garbage removal as the Association deems necessary or proper to defray the added cost of garbage removal resulting from such abuse. The term "abuse" as used herein shall mean any overuse of the garbage removal system or the dumping of anything prohibited (or resulting in an increased charge) by the garbage removal service in the judgment of the Association.

50. Liability of Owners and Occupants For Damages. Any Owner or occupant shall be liable to the Association or other Owners or Occupants for damages to person or property in the Community caused by his negligence.
51. Leases. There is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Single Family Residence or Unit.
52. Terrain Management. A soil survey has been done for the subdivision. The soil type within the subdivision is indexed as No. 10, 26, 27, 28, 50, 71, 74, 76, 85, and 86. A full copy of the soil survey is available for review, from the Soil Conservation Service, the Developer's sales office, or the Surveyor's office.
- a. For construction, the topsoil will be removed from the actual building site as it contains a high percentage of organic matter not suitable for building support. The topsoil will then be spread over the areas disturbed during construction for the purpose of enhancing the re-vegetation of the disturbed area.
- b. The Lot and Tract Owners are hereby advised of the shrink, swell, and frost heave characteristics of the soil. It is recommended that foundations be professionally engineered to best fit on the individual terrain of each Tract or Lot.
- c. Private driveways may be constructed on side hills by lot and Tract Owners. In each such instance, the topsoil groups must be thoroughly mixed in the cut and fill operations. Water must also be thoroughly mixed in the cut and fill operations. Water must be added or removed from the sub grade during compaction for the maximization of moisture content for compaction. Ditches must be on the cut side of the drive in order to drain under the drive with culverts or along the drive into a natural drainage.
- d. The driveway crown and ditches should provide sufficient drainage to prevent the entrance of water into the sub grade. The overlaying base course must be crowned in order to prevent the entrance of water.
- e. On county and private roads, each Lot/Unit and Tract Owner is required to provide a driveway culvert meeting Lincoln County Regulations for the entrance to all Lots/Units located where roadway drainage ditches exist. A driveway permit is required from the Lincoln County Road Superintendent prior to driveway construction for Lot/Units considered to be fronting a county road. A permit from the New Mexico State Highway Department is required for Lot/Units fronting the state highway.
- f. Since the Developer or, at the expiration of the Developer's Period of Control, the Board of ARC will control the location of each Dwelling and driveway, each Owner must incorporate and follow proper terrain management procedures in order to have his plans approved. Some Dwellings and driveways must be built on large cuts and fills, and if so, such fills and cuts must be stabilized by the use of retaining walls, concrete grout, erosion matting, or rock landscaping. Cuts and fills that are not stabilized in this manner must be

stabilized by re-vegetation and be covered with erosion matting or straw. A silt basin constructed of anchored straw bales, erosion control materials, or acceptable alternatives must be placed at the bottom of, and on all fills over eight (8') feet in height. A water retention detention plan must be provided on each Lot/Unit or Track to control all driveway, building and landscaping runoff water.

g. *Owners are advised that they must treat the bottom of every arroyo or canyon as a potential flood area. Structures should not be placed in the bottom of or in the mouth of an arroyo or canyon.*

53. Restriction Against Keeping Large Animals and Fowl. No large animal or fowl — including without limitation, all cows, pigs, goats, sheep, llamas, ostriches, or the like — shall be kept or maintained in, on or about the Property, or any portion of it, nor shall any chicken yard, hen house, pheasant farm, or similar facility be maintained on the Property. Horses may be kept only on Lots designated as "Lots for Horses" or "Lots for Larger Animals." Horses must be kept in a properly stabled or penned area. Horses may not be allowed by the Developer or at the end of the Developer's Period of Control, the Board or ARC.

54. Fencing. All fencing must be approved by the ARC. In addition, the following restrictions apply:

a. The area between the front of a home and the edge of the adjoining street shall not be fenced unless approved by the Board.

b. The following fence types are allowed:

i. iron railing, subject to design approval of the Developer/Board or ARC;

ii. wireless electronic safety fencing installed underground which inhibits domestic animals from straying from the premises by the use of electric impulses;

c. The following fence types are not allowed:

1. Hog, sheep, and chicken wire;
2. Barbed or smooth wire;
3. Galvanized chain link fencing; or
4. Any metal fencing except as allowed above.

55 Party Walls. Each wall and fence built by the Developer as part of the original construction on any Lot/Unit shall constitute a party wall if: (a) any part is built upon or straddling the boundary line between two adjoining Lots/Units or (b) it is constructed within five (5) feet of the boundary line between adjoining Lots/Units and the Owners agree in writing that it is a party wall. The cost of maintaining, repairing or replacing the party wall shall be divided equally between the Owners.

EXHIBIT "2"

SINGLE FAMILY AND MULTI-FAMILY RESIDENTIAL
USE STANDARDS AND RESTRICTIONS

1. Household Composition. No rule shall interfere with the freedom of Occupants of a Dwelling to determine the composition of their households, except that the Declaration limits, residency in a Dwelling to no more than two (2) individuals per bedroom.
2. Alteration of Garage Space. If a garage is included in the original design and construction of a Lot/Unit it is intended that the garage be used primarily for the parking and storage of vehicles. No such garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein, after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.
3. Garage Doors. Garage doors must be closed, except when entering, using or exiting the garage. Recreational and Oversized Vehicles may be parked in the garage if the garage door can be closed.
4. Detached Garages. Detached garages are not allowed without the prior written consent of the Developer or, at the end of the Developer's Period of Control, the Board or ARC; provided, however, any detached garages must be similar in design and construction to the principal Dwelling or Building.
5. Clothes Lines. Outside laundry, laundry poles or lines are not allowed.
6. Business Use. The operation of a commercial trade or business in a designated Residential Area is prohibited unless: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (2) the business activity conforms to all zoning requirements for the Project; (3) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of occupants of the Project; (4) the business activity is consistent with the residential character of the area and does not constitute a nuisance, or hazardous or offensive use, or threaten the security or safety of other residents; (5) all of the necessary licenses and permits have been obtained; and (6) the Board has been notified in writing of the commercial, trade and/or business activity.
7. Swimming Pools. Swimming pools on any lot/unit are prohibited. Indoor "lap pools" will be allowed. Hot tubs on decks require the prior written consent of the Developer or at the end of the Developer's Period of Control, the Board or ARC.
8. Air Conditioning Units. Only refrigerated air conditioners shall be permitted, except as may be permitted by the Developer and after the end of the Period of Developer's Control, the Board or ARC. No window air conditioning units may be installed in any Dwelling.

EXHIBIT "3"
SUB-ASSOCIATIONS

1. Sub-Associations. Sub Associations may be established by the Developer, Association, or the Board to operate and control particular Residential, Commercial, or Resort Areas within the Project.

- a. Mandatory Membership. Membership in a sub association is mandatory where they are established and appurtenant to the Lot/Unit, and may not be separated therefrom.
- b. Additional Covenants Conditions and Restrictions. Subject to the Master Declaration, sub associations may adopt additional covenants, conditions and restrictions governing a particular Residential Commercial, or Resort Area, which shall become effective upon recording in the Office of the County Clerk of Lincoln County, New Mexico.
- c. Sub-Association Base Fees. In addition to the Base Fee charged by the Master Association, a Sub Association may charge the Owners in the Sub Association a RHOA Base Fee or a CPOA Base Fee, respectively, to pay for Common Expenses unique to the Sub Association which shall be assessed and collectible in the same manner as any other Assessment.
- d. Incorporated Sub Association. Each Sub Association shall be incorporated under the laws of the State of New Mexico.
- e. Management of the Sub Association Each Sub Association shall be governed by a Board of Directors duly elected and qualified, and comprised of Members of the sub association.
- f. Voting Groups. The Developer may, but is not obligated to, designate Voting Groups consisting of one or more sub associations for the purpose of electing Members to the Board of Directors. Following termination of the Class "B" Control Period, the number of Voting Groups within the Project shall not exceed the total number of directors authorized by the Declaration. Members in each Voting Group shall vote on a separate slate of candidates for election to the Board of Directors, with each Voting Group being entitled to elect the number of directors specified in the Declaration. The Developer shall establish Voting Groups, if at all, not later than the date of expiration of the Developer's right to annex property pursuant hereto, by filing with the Association and in the Office of the County Clerk for Lincoln County, New Mexico, a Supplemental Declaration identifying the Residential, Commercial, or Resort Areas within each Voting Group. Such designation may be amended from time to time by the Developer, acting alone, at any time prior to the expiration of Developer's right to annex

property pursuant hereto. After expiration of the Developer's right to annex property pursuant hereto, the Association may amend such designation with the affirmative vote of at least a Majority of all Owners and a Majority of the Owners in the Voting Group or Groups to be affected. Until such time as Voting Groups are established, all of the Project shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed any and all portions of the Project that which are not assigned to a specific Voting Group shall constitute a single voting group.

- g. Powers of the Association Relating to Sub Associations. No sub association may take any action or enter into any transaction which affects the Association, Common Areas and Facilities or Master Plan without the express prior written consent of the Developer (until the end of the Developer's Period of Control) and the Association, which shall not be unreasonably withheld, conditioned or delayed.

EXHIBIT "4"
ARCHITECTURAL REVIEW AND GUIDELINES

1. Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever on all Lots/Units, whether real, personal or mixed, shall be initiated or be permitted to continue or exist within the Project without the prior written consent of the Arc.
2. Composition of the Architectural Review Committee. The ARC shall consist of a minimum of three (3), but no more than five (5) persons. Each person shall hold office until he has resigned or has been removed, but in any event, until his successor has been appointed. Members of the ARC may be removed at any time with or without cause. The Developer or his designee shall function as the ARC until such time as a Committee is formally appointed.
3. Appointment of Members of the Architectural Review Committee. So long as the Developer owns a Lot/Unit or any portion of the Property, he shall be entitled to appoint a majority of the Members of the ARC. Thereafter, the Members shall be appointed by the Board.
4. Compensation. The Members of the ARC may receive compensation for rendered upon execution of an agreement with the Board relative thereto, and may be reimbursed for actual expenses incurred in the performance of their duties hereunder.
5. Limitation of Liability. Neither the ARC nor any Member of said Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, and they shall not be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction, on or modifications to any Building or Lot/Unit, and in all such matters, they shall be defended, saved, held harmless and indemnified by the Association, except in the instance of gross negligence on the part of any Member of said Committee.
6. No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans, specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans, specifications, drawings, or other matters subsequently or additionally submitted for approval.
7. Variance. The ARC may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and ©) when construction in

accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of an adjoining Project. Inability to obtain a permit or license, or the terms or conditions of any governmental approval or any financing shall not be considered a hardship warranting a variance.

Notwithstanding the above, the ARC may not authorize variances without the written consent of the Developer.

8. Enforcement. The ARC, upon approval by the Board, shall be authorized on behalf of and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Project, the continuation of which violates the provisions of this Declaration, Design Guidelines or approved plans and specifications. The authority of the ARC shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association. If an attorney is hired to interpret or enforce architectural controls, the prevailing party shall be entitled to recover his reasonable attorney's fees and costs, regardless of whether a lawsuit is filed.
9. Additional Damages. Costs, expenses and damages determined by the Board to be proximately caused by an Owner's deviation from or violation of the architectural controls, or the costs and expenses incurred by the Association to correct the same shall be considered an Individual Assessment against the Owner and the Lot/Unit owned by said Owner, which Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion.
10. Non-Exclusive Remedy. The right of the Association to levy an Individual Assessment shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien securing said Individual Assessment, proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.
11. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said disputes when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.
12. Application. The application process I outlined in Exhibit "6" attached hereto and incorporated herein by this reference.
13. Design Guidelines. The Design Guidelines are set forth in Exhibit "5" attached hereto and incorporated herein by this reference.

14. Approvals by Lincoln County. Lincoln County and the State of New Mexico have laws regulating the division and sale of real property. In most cases, after obtaining the approval of the Developer or the Board or ARC, an Owner or Builder or the Developer must also obtain the required county or state approval. This specifically applies, although it is not limited to the moving or altering of a Lot/Unit boundary and/or development of the Tracts.

EXHIBIT "5"
DESIGN-GUIDELINES

1. Basic Building Restrictions. The following basic building restrictions shall be binding upon the construction of Improvements in or on the Property.
 - a. Use of Property. Each Lot/Unit shall be used solely for residential, commercial, resort or mixed-use purposes depending upon the nature of the area in which the Lot/Unit is located.
 - b. Architectural Approval. The Plans and Specifications, including the location of all improvements, must be approved in writing by the Developer, Board or ARC prior to commencement of any construction. Basic design guidelines shall be limited to southwestern style architecture, including but not necessarily limited to the following styles: Pueblo, Territorial and Northern New Mexican Adobe Pitched Roof.
 - c. Property Line Setbacks. Property line setbacks shall comply with applicable governmental standards and the requirements of any RHOA or CPOA. For all residential lots, excepting garden/patio homes, the setbacks shall be as follows: 25' setback from golf course, 20' set back from rear lot line, 25' setback from roadway and 15' side yard setback. Minimum setback from property lines for garden/patio homes shall be as follows: 20' setback from golf course, 20' setback from roadway, 0 setback on one (1) side of the lot and 7 1/2' setback on the other side of the lot. Minimum setback from the property line fronting a road or Golf Course is 25'. Minimum side yard setback is 15' for all lots except Garden/Patio Homes where the requirement may be reduced to zero on one side of the lot. Minimum rear lot line set back is 20'.
 - d. Floor Space. The minimum size of each Dwelling or Building shall comply with, county standards and the requirements of any RHOA or CPOA within which the Lot/Unit is located. The base (main) floor level, excluding garage and storage, shall not be less than 1,200 sq. ft., for a Town Home, 1,300 sq. ft., for a Garden/Patio Home, and 2,250 sq. ft., for any lot in excess of a quarter acre. Minimum floor space requirements may be more restrictive as established by any applicable sub-association.
 - e. Exterior Materials. All Exterior Surfaces of any building shall be of construction materials and of colors that blend with the surrounding landscape, and must be approved by the Developer, Board, or ARC, taking into consideration any RHOA or CPOA guidelines. Buildings or structures shall not be constructed of any building material that will cause sunlight to be reflected away from the building.
 - f. Roofs. All roofs and roof overhangs shall be of construction materials and of colors approved by the Developer, Board or ARC, and blend into the surrounding landscape, taking into consideration any RHOA or CPOA guidelines. Galvanized, white, or silver colored or any other reflective roofing shall not be used. All roofs will have a minimum 50 year life expectancy and shall not encroach on any setbacks.

- g. Height. With the exception of the clubhouse and related Buildings, no Building shall exceed 30 feet in height in the front of the structure or 45 feet in height measured from the highest natural ground level adjacent to such Building to the highest point of the ridge line of such Building, unless otherwise approved by the Developer or, at the end of the Developer's Period of Control, the Board or ARC.
- h. Garages. All houses must have a minimum two (2) car garage. Garages must be attached and match the general overall construction materials, design, and colors or the main structure. Garages must meet the criteria of and comply with county standards and the requirements of any RHOA or CPOA.
- i. Garage Doors. All Garage doors and systems must be approved by the Developer, Board or ARC, taking into consideration any RHOA or CPOA guidelines. Garage doors must match the overall design and color scheme of the main structure.
- j. Foundations. A maximum of 18" of exposed concrete foundation shall be permitted in the structural side of a building. Concrete Masonry Units (CMU) and poured concrete used for foundation purposes shall be plastered and/or painted to match the color and texture of the main structure.
- k. Windows. Windows and window units must be approved by the Developer, Board or ARC, taking into consideration any RHOA or CPOA guidelines, and must be consistent with the overall design of the main structure.
- l. Decks. Decks shall be integrated with the architecture of the main Building. A covered deck roof must be consistent with the slope of the main roof on the Building. Deck supporting posts shall be four inches (4") or greater. Exposed wood deck elements shall be painted or stained in color that is consistent with the overall structure.
- m. Construction Time Requirements. Construction must be commenced and finished within twelve (12) months from the date of the issuance of the building permit, unless an extension is approved by the Developer, the Board or the ARC. All work or construction shall be prosecuted diligently and continuously from the time of commencement until completed.
- n. New Construction. All Buildings shall be constructed on site and be of new construction and no Building may be moved onto a Lot/Unit except for temporary facilities used by the Developer and/or the golf course.
- o. Storage of Building Materials. No building materials shall be stored on or around the exterior of any Lot/Unit except temporarily during construction of an improvement or its alteration, renovation or remodeling, and then only when a building permit is in force.
- p. Occupancy During Construction. No Improvement or structure shall be occupied in the course of original construction until the appropriate governmental authorities have issued all required certificates of occupancy.
- q. Temporary Structures. No trailer, mobile home, tent, shack, or other temporary building, improvement, or structure shall be placed upon any property without the prior approval of the Developer, Board or ARC, except that Developer may maintain temporary structures necessary for storage of tools and equipment and for office space for architects, sales personnel, builders and foremen during actual

- construction, and the golf course may place tents and/or temporary clubhouse facilities without the prior approval of the Developer, Board or ARC.
- r. Construction Activities. This Declaration shall not be constructed so as to unreasonably interfere with, or prevent normal construction of Improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence and is in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provisions, including but not limited to any provisions prohibiting temporary structures, may be granted by the Developer, Board or ARC, provided that such waiver shall be only for the reasonable period of such initial construction. Such waiver may, but need not, be recorded or in recordable form.
- s. Driveways. Driveways for dwellings shall be large enough to accommodate at least two (2) parked automobiles and shall not interfere with any rights or way, easements, or drainage areas within the development, without the prior written consent of the Developer, Board or ARC.
2. Utilities. Each Owner shall be and is hereby made subject to all easements that not or in the future may be used for gas, electric, telephone, cable television, cable for computers, water, sewer, and other' lines present or in the future, as are necessary to provide utility services to a Lot/Unit, adjoining Lot/Units and the Improvements thereon, the golf course and any course Improvements. Each Owner by accepting a deed or other document of conveyance agrees to execute such further grant(s) or other instruments as may be required by any utility or other company or public governmental or quasi - governmental entity for such purposes. Any necessary electrical, telephone, gas, water, sewer, cable television, cable for computers, and other utility conduits, lines and pipes on any Lot/Unit shall be placed underground. No transformer, electrical, gas, water or other meter or device of any type, or any other apparatus shall be located on any pole within the Property. All utility installations must be approved by the Developer, Board or ARC in writing. Each Owner shall abide by all applicable rules and regulations of all utility and other companies, governmental entities or quasi - governmental entities, who supply or provide utilities or related services to the Property.
3. Landscaping and Drainage. The following restrictions apply to all landscaping and drainage in the Project.
- a. Generally. All landscaping shall be in conformity with the requirements set forth in Exhibit "1" of these Covenants, Conditions and Restrictions.
- b. Completion of Landscaping. Landscaping must be completed within one (1) year of the issuance of a certificate of occupancy.

- c. Trees. When a Lot is improved with a Dwelling and is landscaped, unless the Developer or at the end of the Developer's Period of Control, the Board or ARC permit otherwise in writing, which it may freely do, the following criteria for tree planting shall be followed: On each Lot, a minimum of three (3) trees must either exist or be planted on the Lot, of which; one (1) must be a deciduous tree with a minimum one inch (1") caliper (the diameter of the tree 10" above the top of root-ball).
- d. Fences and Walls. All fences and walls must be approved by the Developer, Board or ARC.
- e. Maintenance of Unimproved Lot/Unit. Owners shall maintain an unimproved Lot/Unit in its natural condition, but free and clear of any and all noxious weeds, trash (other than trees) and dead or dying trees. Growth levels, if reasonably possible and aesthetically desirable should be kept below twelve (12") inches in height. Should owner fail to maintain lot as required herein then the Board or the ARC shall have the right to notify the owner to bring the lot into compliance within 30 days of the notice and if the owner should fail to do so, then in that event the Board or the ARC shall have the right to have the property brought into compliance and the charge for services, if unpaid, may be filed as a lien against the property. The provisions for that lien shall be as otherwise stated in these restrictive Covenants elsewhere regarding enforcement of liens.
- f. Drainage. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot/Unit as fixed by the original finish grading except after first obtaining the prior written approval of the ARC. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from Buildings and so as to protect foundations and footings from excess moisture. ***ANY DRAINAGE FLOWS DIRECTED TO ADJACENT LOT/UNIT SHOULD NOT EXCEED HISTORIC FLOWS. OWNERS SHALL NOT IMPEDE OR RETAIN WATER FLOW IN ANY OF THE NATURAL DRAINAGE GULCHES.***
- g. Entries and Monuments. Entry structures or gates may be placed on private roads or footprint easements on the entry Lot/Unit. Such structures shall be maintained by the Association. The Association or its designated agents have right of access to perform maintenance thereto. Owners may not obstruct the view, attach any improvement, including fencing, to, against, or in front of such structures. Owners shall maintain their Lot/Unit adjacent to the entry structures so as to maintain a clear view. The Association shall maintain all entries including landscaping, monuments, walls, and the like.
- h. Outdoor Fountains and/or Artificial Water Features. No outdoor fountains or artificial water features shall be permitted without the express written consent of the ARC or the Board.
- i. Water Collection Systems. Each improved lot or unit shall have a rainwater collection system as required in Exhibit "1" of the Covenants, Conditions and Restrictions.

EXHIBIT "6"
APPLICATION TO THE ARCHITECTURAL REVIEW COMMITTEE

1. Submission of Plans and Specifications. Plans, specifications, drawings, proposals and the like shall be submitted to the ARC as follows, unless otherwise determined by said Committee.
 - a. Submittal. Prior to commencing any construction, an Owner shall submit an application for approval of the proposed improvement or work (the "Proposed Improvement") to the ARC. Such application shall be in the form required by The Arc and shall include such information as required under the Design Guidelines, such as plans showing site layout, structural design, exterior elevations, exterior materials and colors, signs, topography, landscaping, drainage lighting, irrigation, utility facilities layout and screening therefore, and other features of proposed construction, as applicable. Before the Owner may begin construction of the proposed Improvement, the application must be approved in writing by The ARC.
 - b. Preliminary Architectural Drawing's Plans and Specifications. The ARC may require, as a minimum, the following:
 - (1) Certified plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
 - (2) Floor plans of each floor level to scale.
 - (3) Elevations to scale of all sides of the Dwelling or Structure.
 - (4) One major section through Dwelling or Structure.
 - (5) A perspective (optional).
 - (6) Specifications of all outside materials to be used on the exterior of the Dwelling.
 - c. Review. In reviewing each submission, The Arc may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Arc may require protection of native plants within the construction site, the installation of an irrigation system for the landscaping, zeriscape landscaping and the inclusion of natural plant life on the Lot/Unit as a condition of approval of any submission. Approval by The ARC shall not constitute approval of or waiver of approvals or reviews required by the Developer, or any other governmental agency or entity having jurisdiction over architectural or construction matters. The ARC shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business. The ARC shall within thirty (30) days advise the party submitting the Plans, in writing, at an address specified by such party at the time of submission, of (1) the approval of Plans, or (2) the segments or features of the Plans which are deemed by The ARC to be inconsistent or not

in conformity with this Declaration and/or the Design Guidelines, and the reasons for such finding, and suggestions, if appropriate, for the curing of such objections. In the event The ARC fails to advise the submitting party by written notice within the period specified of either the approval or disapproval, and any suggestions for curing the objections of the Committee, approval shall be deemed to have been given. Notice (for purposes of this Section only) shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, given that said envelope has been properly addressed and not lost by the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

d. Commencement. The ARC, as part of the Plan approval, may require that construction in accordance with approved Plans be commenced and/or completed within a specified time period. In such event, if construction is not commenced or completed in a timely manner, then such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to The ARC for reconsideration. If construction is not completed on a Proposed Improvement for which Plans have been approved within such period, such approval shall be deemed withdrawn and such incomplete construction shall be deemed to be in violation of this Declaration.

e. Final Plans and Specifications and Working Drawings. The ARC may require, as a minimum, the following:

- (1) Certified plot plans prepared by a licensed surveyor to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
- (2) Detailed floor plans.
- (3) Detailed elevations, indicating all materials and showing existing and finished grades.
- (4) Detailed sections, cross and longitudinal, and all other drawings required by the permitting governmental agency, i.e., the Lincoln County Building Department, e.g., foundation plan, floor(s), framing plan, roof framing plan, etc.
- (5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addendums or riders nothing the colors of all materials to be used on the exterior of the Dwelling.
- (6) Items 2, 3, 4, and 5 shall be prepared by a registered New Mexico architect or engineer.

EXHIBIT "7"
INSURANCE

1. Insurance. The Board shall at all times purchase, maintain in force, and pay the premiums for, if reasonable available, insurance on the Common Areas satisfying at least the following requirements:
 - a. Property Insurance. Blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this subsection, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard property or casualty policy for a planned residential, commercial, or mixed development. Additional coverage may be added by the Board as it deems necessary or proper.
 - b. Public Liability Insurance. Public liability insurance with adequate limits of liability for bodily injury and property damage, consistent with that of similarly situated subdivisions in Lincoln County, New Mexico. If possible, the policy should be written on the comprehensive form and shall include not-owned and hired automobile liability protection.
 - c. Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and Omissions insurance).
 - d. Fidelity Bond. A separate fidelity bond in an amount equal to or greater than a sum equal to the greater of (1) three (3) months aggregate Assessments on all Lot/Units plus reserve funds or (2) the total amounts of funds held by said persons and to which they have access, to cover all non-compensated officers as well as all employees for theft of Association funds.
 - e. Agents. Furthermore, where the Board or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Board or the Association.
 - f. Quality of Coverage. The bonds required shall meet the following additional requirements: (1) they shall name the Board, the Owners Association, and the Property Manager as obligee; (2) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (3) the premiums on all bonds required herein for the Board and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Board of the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least thirty (30) days' prior written notice to the Board and the Association, to any Insurance Trustee, and to each servicer of loans on behalf of any Mortgagee.

- g. Earthquake Insurance shall not be required unless requested by a least seventy five percent (75%) of the Members of the Association.
- h. Quality of Carrier. An "A-" or better general policyholder's rating or a "7" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports – International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service – if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.
- i. The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth in the name of the "Association of the use and benefit of the Owners."
- j. Designated Representative. The Association may designate 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 individual Owners.
- k. Beneficiary. In any policy covering the entire Project, each Owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided ownership interest in the Common Areas and Facilities.
- l. Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.
- m. Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to each Mortgagee.
- n. Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items:
 - i. Waiver of Subrogation. A waiver of the right of a subrogation against Owners individually;
 - ii. Individual Neglect. A provision that the insurance is not prejudiced by any act or neglect of any individual Owner;
- o. Deductible. The deductible on a claim, made against the Association's Property Insurance Policy shall be paid for by the party responsible for the loss.
- p. Individual Insurance. Each Owner and occupant shall purchase and maintain adequate liability and property insurance on his Lot/Unit, personal property and contents; provided, however, no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way' as to decrease the amount which the Association, on behalf of all the Owners and their mortgages, may realize under any insurance policy which the Association may have in force on the Property at any particular time.

- q. Primary Coverage. The insurance coverage of an Owner shall, in the event the Association also has insurance covering the loss, be primary and the insurance of the Association shall be secondary.
 - r. Prompt Repair. Each Owner further covenants and agrees that, in the event of any partial loss, damage or destruction of his Lot/Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.
 - s. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair the damages promptly and reasonably. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association, and any Mortgagee of a Lot/Unit, and may be enforced by them.
 - t. Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated subdivisions in Lincoln County, New Mexico, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but not more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance, an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction.
 - u. Restrictions on Policies. No insurance policy shall be maintained where:
 - 1. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, Mortgagee, the Board, or the Association;
 - 2. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's Board, policyholder, or member; or
 - 3. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, Association, or Owner) from collecting insurance proceeds.
1. Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Board or Owners to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem appropriate from time to time.

EXHIBIT "8"
DESTRUCTION AND EMINENT DOMAIN

2. Destruction, Condemnation and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.
- a. Definitions. Each of the following terms shall have the meaning indicated:
- (1) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.
 - (2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.
 - (3) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.
 - (4) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.
 - (5) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) or more of the estimated restored value of the Project.
 - (6) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.
 - (7) "Restored Value" shall mean the fair market value of the Project after Restoration, as determined by an MAI or other qualified appraisal.
 - (8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.
 - (9) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot/Units in which they are interested.
- b. Determination by Board. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project

under eminent domain or by grant or conveyance in lieu thereof, the Board shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board may retain and rely upon one or more qualified appraisers or other professionals.

- c. Restoration of the Project. Restoration of the Project shall be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lot/Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities that are then subject to Mortgages held by Eligible Mortgagees.
- d. Notices of Destruction or Obsolescence. Within thirty (30) days after the Board has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall; with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.
- e. Excess Insurance. If the insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board or Association exceed the cost of Restoration when Restoration is undertaken, then the excess funds shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This covenant is also for the benefit of the Association and any Mortgagee, and, therefore, may also be enforced by them. Payment to any Owner whose Lot/Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- f. Inadequate Insurance. In the event the cost of Restoration exceeds Available Funds, all of the Lots/Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership interest in the Common Areas.
- g. Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots/Units will not be the subject of Restoration (even though the

Project will continue) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Lots/Units.

- h. Sale of Project. Unless restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Plat Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot/unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- i. Authority of Board to Represent Owners in Condemnation or to Restore or Sell. The Board, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.
- j. Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgages as their interests may appear.
- k. Restoration Power. The Board, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot/Unit therein whenever Restoration or sale as the case may be, is undertaken as hereinabove provided.
- l. Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments that which may be necessary or appropriate for Restoration or sale, as the case may be.

EXHIBIT "9"
ACTIVITY CARDS

The Activity Card, and/or any other devices such as keys or codes, granting entrance to Owners and Guests of the Association, to amenities or facilities of the Association, may not be separated from the ownership of a Lot/Unit and are nontransferable. Any attempt to transfer an Activity Card, or the like, shall void the Card unless approved by the Association.

- a. Issuance to Owner. The Developer, or at the end of the Developer's Period of Control, the Board or ARC shall determine the guidelines for the distribution and control of Activity Cards. Generally, one Activity Card shall be issued to each Owner with a maximum of two Activity Cards. Generally, one Activity Card shall be issued to each Owner with a maximum of two Activity Cards per Lot/Unit. Owners or Occupants who abuse this privilege may forfeit the opportunity to have possession of Activity Cards. No Activity Cards shall be allocated to any Lot/Unit that is not occupied by an Owner. The Board shall determine entitlement to Activity Cards on an annual basis. If the Lot/Unit continues to be occupied by an Owner and all applicable Assessments and Additional Charges have been paid, the Activity Card(s) allocated to such Lot/Unit shall be renewed annually without charge. The Board of Directors may establish policies, limits, and charges with regard to the issuance of replacement cards and/or guest privilege cards.
- b. Issuance to the Developer. As long as the Developer owns the Property, or any portion thereof, the Board shall provide the Developer, free of charge, with as many Activity Cards as the Developer, in its sole discretion, deems necessary for the purpose of marketing the Property. The Developer may transfer the Activity Card to prospective purchasers of a Lot/Unit, subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to the Developer shall entitle the bearer to use all recreational facilities, Common Areas and Facilities, and Private Amenities, where such use is allowed (subject to the payment of greens fees, admission fees, or other use fees charged to Owners holding Activity Cards).

EXHIBIT "10"
EXPANSION OF THE PROJECT

1. Reservation of Option to Expand. Developer hereby reserves the option to expand the Project to include additional Lots/Units commercial, retail and private amenities. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire fifteen (15) years from the date following the first conveyance of a Lot/Unit in Phase I to a purchaser unless sooner terminated by Developer's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said fifteen (15) years. Such right may be exercised without first obtaining the consent of vote of Owners and shall be limited only as herein specifically provided. Such Lots/Units shall be constructed on any or all portions of the Additional Land.
2. Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record, by Developer, in the office of the County Clerk of Lincoln County, New Mexico, no later than fifteen (15) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots/Units, together with supplemental Map of Maps containing the same information with respect to such as was required on the Map with respect to Phase One. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.
3. Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration; plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots/Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Clerk of Lincoln County, New Mexico of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots/Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lots/Units in the Project as it existed, interest so acquired by the Owner of the Lots/Units encumbering the new Common Areas added to the Project as a result of such expansion.
4. Declaration Operative on New Lots/Units. The new Lots/Units, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Clerk of Lincoln County, New Mexico, shall be subject to all the terms and conditions of the New Mexico Law and this Declaration, as amended or supplemental from time to time.

5. Expansion of Association. Any such expansion of the Project will have the effect of also expanding the Master Association to include the additional lots/units.
6. Right of Developer to Adjust Ownership Interest in Common Areas. Each deed of a Lot/Unit shall be deemed to irrevocably reserve to the Developer the power to appoint to Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Amended Declaration. The proportionate interest of each Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Developer, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Lot/Unit in the Project shall be deemed a grant of such power to the Developer. Various provisions of this Declaration and deeds and mortgages of the Lot/Unit may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than fifteen (15) years after the effective date of the Declaration. Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interest in the Common Areas contained therein, shall automatically become effective for all purposes and shall fully supersede any similar schedule that was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.
7. Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that: (1) All or any part of the Additional Land may be added to the Project without any limitations whatsoever, save and except that all additional Lots/Units created must be restricted to residential, commercial, retail, resort or mixed-use; (2) Portions of the Additional Land may be added to the Project at different times without any limitations; (3) Developer shall have the right, without further conveyance or documentation, to build roads and access ways to the Additional Land through the easement areas as shown on the Map. The Association shall not allow anything to be built upon or interfere with said easement areas; and (4) No assurances are made concerning: (a) The locations of any Improvement that may be made on any portion of the Additional Land that may be added to the Project; (b) The type, kind or nature of Improvement which may be created on any portion of the Additional Land, except that the Improvements will be of a similar quality of materials and construction to those in the first phase of development and will be substantially completed prior to annexation; (c) Whether any Improvements created on any portion of the Additional Land will be substantially identical to those within the initial Project except that the Improvements will be constructed of an equal or better quality of materials and construction than those in the first phase of development; and (d) The type, size, or maximum number of private yard

areas which may be created within any portion of the Additional Land added to the Project; and (5) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Developer any obligation, or to restrict Developer in any way with regard to: (a) The submission of any portion of the Additional Land to the provisions of this Declaration; (b) The creation, construction, or addition to the Project of any additional property; (c) The carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) The taking of any particular action with respect to the Additional Land, the Project, or any other real estate.

EXHIBIT "12"

GOLF COURSE, PRIVATE AMENITIES, AND RELATED RESORT ITEMS

1. Golf Course. There is a golf course within the Project which is a separate entity privately owned and controlled by CDS Rainmakers – Golf, L.C. It is a Private Amenity. Developer and CDS Rainmakers – Golf, L.C. reserve the irrevocable right to own and/or operate the golf course (a) privately, (b) as a joint venture with a third party, (c) as a semi-private venture in which private memberships are sold, and/or the golf course is subsequently sold to the membership, and/or the public has access to the course, or some combination thereof.
2. Other Private Amenities. There are or may be other Private Amenities, separately owned and operated, located off-site or within the Project, including without limitation (and in some instances subject to deregulation or public utility laws) a utility, water, sewer, sanitation, telecommunications, cable, internet service and related companies and facilities which may be owned and operated (a) privately, (b) as a joint venture with a third party, (c) as a semi-private venture in which private and public access is provided, (d) co-op, or some combination.
3. Rights of the Association and Owners. Neither the Association nor any Owner shall have any ownership interest in the golf course or any Private Amenity, unless expressly granted in a recorded deed or other instrument of conveyance. No Owner shall have any ownership interest in any such golf course or Private Amenity solely by virtue of his membership in the Association. The Association, by a majority vote of its Board may, if the opportunity arises, enter into a purchase, lease or license agreement with the owner of the golf course or other Private Amenity, although such owner or operator is under no obligation to sell.
4. Golf Course, Private Amenities and Related Activities. Each Owner understands and agrees that his Lot/Unit is or may be adjacent to or near a golf course, Private Amenity and other related facilities, and that resort-related activities, such as a golf tournament, may be held within the Property. Each Owner acknowledges that the location of his Lot/Unit within the Property may result in nuisances or hazards to persons and property on the Lot/Unit as a result of normal golf course operations or as a result of such other activities. Each Owner covenants for itself, its heirs, successors, successors-in-title, and assigns that it shall assume all risks associated with such location, including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such related activities and shall indemnify, save and hold harmless the Developer, CDS Rainmakers – Golf, L.C., CDS Rainmakers Utilities L.C. and CDS Rainmakers Development, L.C., and the Association from any liability, claims, or expenses, including attorney's fees, arising from such property damage or personal injury. Each Owner further covenants that the Association and Developer shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation, or use of the golf course, Private Amenities, and to the carrying out of such related activities.

5. Miscellaneous.

- a. Right to Use. Access to and use of any Private Amenity or any golf course within the Project is strictly subject to the rules and procedures of such Private Amenity or golf Course. The Private Amenities are not subject to the Governing Documents. No Person automatically gains any right to enter or use any Private Amenity or golf course by virtue of membership in the Association. Rights to use the Private Amenities and golf course will be granted only to such Person's, and on such terms and conditions, as may be determined by their respective owners. Except as otherwise agreed by any owner of a Private Amenity and golf course, such owners shall have the right from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions for use of their respective Private Amenities and to terminate use rights altogether. Except as provided herein, no representations or warranties, either written or oral, have been or are made by the Developer or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of any Private Amenity. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined into by the Developer and the owner(s) of any Private Amenity and golf course which is the subject thereof.
- b. Assumption of Risk and Indemnification. Each Owner, by purchasing a Lot/Unit in the vicinity of the golf course or Private Amenity, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of such, including, without limitation: (1) Noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (2) noise caused by golfers, (3) use of pesticides, herbicides and fertilizers, (4) use of recycled water in the irrigation of the golf course, (5) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (6) errant golf balls and golf clubs, and (7) design of the golf course. Each such Owner agrees that neither Developer, CDS Rainmakers – Golf, L.C., CDS Rainmakers Utilities, L.C., or the Association shall be liable to Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Lot/Unit to a golf course, including, without limitation, any claim arising in whole or in part from their negligence, each Owner hereby agrees to indemnify, save and hold then harmless from any and all claims by Owner or his family members, guests, visitors, tenants, and other upon such Owner's Lot/Unit.
- c. Golf Course View. Neither the Developer, CDS Rainmakers – Golf, L.C., CDS Rainmakers Utilities, L.C., or the Association guarantees or represents that any view over and across any golf course from adjacent Lot/Unit will be preserved

without impairment. No provision of this Declaration shall be deemed to create an obligation of the Developer CDS Rainmakers – Golf, L.C., or the Association to prune or thin trees or other landscaping except as otherwise expressly provided herein. Each Owner acknowledges and agrees that trees and other landscaping may be added to any golf course from time to time. In addition, the location, configuration, size, and elevation of the tees, bunkers, fairways, and greens on any golf course may be changed from time to time, in the discretion of the owner or operator of the golf course. Any such additions or changes to such golf course may diminish or obstruct any view from a Lot/Unit and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any golf course may not adversely affect drainage flow across the Project.

- d. Golf Balls and Water Overspray. The Property is burdened with an easement permitting golf balls unintentionally to come upon such Common Area, Lot/Unit or Property and for golfers at reasonable times and in a reasonable manner to come upon the Property to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls; however, under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Developer, CDS Rainmakers, Utilities, L.C., CDS Rainmakers – Golf, L.C., the Association or Board. CDS Rainmakers – Golf, L.C., or any subsequent ownership entity shall have the exclusive right and easement to retrieve golf balls from the property within the golf course. The Property is hereby burdened with a non-exclusive easement for overspray of water, materials used in connection with fertilization, and recycled water from any irrigation system serving such golf course.
- e. Conveyance of Golf Course or the Private Amenity. All persons, including all Owners, are hereby advised that no representation or warranties have been or are made by the Developer or any other Person with regard to the continuing ownership or operation of the golf course or other Private Amenity, regardless of its depiction upon any land use plan or other marketing display or plat. No purported representation or warranty, written or oral, in such regard shall ever be effective without an amendment hereto executed or joined into by the Developer. Further, the ownership or operational duties of and as to the golf course or other Private Amenity may change at any time and from time to time by virtue of, but without limitation, (1) the sale or assumption of operations of the golf course or other Private Amenity to/by an independent person or entity, (2) the conversion of the golf course or other Private Amenity membership structure to an equity club or similar arrangements whereby the members of the golf course or other Private Amenity or an entity owned or controlled thereby become the owner(s) and/or operator(s) of the golf course or other Private Amenity, (3) the conveyance, pursuant to contract, option, or otherwise, of the golf course or other Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of Developer or (4) the conveyance of the golf course or other Private Amenity to the Association, with or without consideration and

subject or not subject to a mortgage(s) or other encumbrances. As to any of the foregoing or any other alternative, no consent of the Association any sub association, or any Owner shall be required to effectuate such transfer, even in the case of a conveyance to the Association, for or without consideration and subject to or not subject to any mortgage, covenant, lien, or other encumbrance on the applicable land and other property. No person shall have any ownership interest in the golf course or other Private Amenity solely by virtue of his membership in the Association.

- f. Rights of Access and Parking. The golf course and its members (regardless of whether such members are Owners hereunder), employees, agents, contractors, or designers shall at all times have a right and nonexclusive easement of access and use over all streets located within the Property as reasonably necessary to travel to and from the golf course or other Private Amenity and, further, over those portions of the Property (whether Common Areas or otherwise) reasonably necessary to access or for the operation, maintenance, repair, and replacement of the golf course and its facilities or other Private Amenity. Without limiting the generality of the foregoing, members or patrons of the golf course or other Private Amenities shall have the right to park their vehicles on the streets or Common Areas at reasonable times before, during, and after golf tournaments and other approved functions held by/at the golf course or other Private Amenity.
- g. Temporary Closure. The golf course or other Private Amenity may be closed temporarily for maintenance and repair.
- h. Architectural Control. Neither the Association, nor any Owner shall approve or permit any construction, addition, alteration, change, or installation on or to any portion of the Property which is adjacent to, or otherwise in the direct line of sight from the golf course or other Private Amenity for the depth of one Lot/Unit, without giving the operator of the golf course at least fifteen (15) days' prior notice of his intent to approve or permit such work together with copies of the request therefore and all other documents and information finally submitted in such regard. The golf course or other Private Amenity operator shall then have ten (10) days in which to voice its approval or disapproval, which opinion shall be considered but shall not be binding in the final decision. The failure of the golf course or other Private Amenity operation to respond to the aforesaid notice within the ten (10) day period shall constitute a waiver of the right of the operator of the golf course or other Private Amenity to object to the matter so submitted.
- i. Limitations on Amendments Affecting Golf Course or Private Amenity. In recognition of the fact that the provisions of this Article are for the benefit of the owner of the golf course and other Private Amenity, no amendment to this Article and no amendment in derogation of this Article to any other provisions of this Declaration may be made without the written approval thereof by the owner(s) of the golf course or other Private Amenity, or in the case of a corporate owner, by its Board of Directors. The foregoing shall not apply, however, to amendments made by the Developer.
- j. Golf Cart Path Easement. There may be golf cart path easements designated as such on a plat of the Property that shall be used for golf cart paths, pedestrian

walkways, maintenance and vehicle access, and unhindered access between said paths and the golf course. Nothing shall be placed or maintained in any golf cart path easement that shall interfere with utilization thereof as a playable part of the golf course, and all landscaping and other improvements within a golf cart path easement shall require the approval of the Developer, Board or ARC. The owner of the golf course as well as its members, guests, invitees, employees, contractors and patrons shall at all times have a right and non-exclusive easement of access and use over the golf cart paths, if any, located within the Property, as reasonably necessary for the use and enjoyment of the golf course.

- k. Private Amenity; Assignment and Right of Use. While there may be included within the Property a golf course and other Private Amenities, the Developer makes no representation, promise or warranty that any Private Amenity will exist or continue in operation nor that the facility will be sufficient to serve all eligible users should they choose to use the facility at the same time. The Private Amenities may consist of land, facilities, physical improvements, rights of way, rights of use and other tangibles and intangibles which Developer, CDS Rainmakers – Golf, L.C. or CDS Rainmakers – Utilities, L.C., CDS Rainmakers Development, L.C., may provide in their discretion.
- l. Rights Reserved to Developer. Notwithstanding any provisions of this Declaration to the contrary, the Developer, and any successor who takes the rights in a written instrument, shall have the following reserved rights in relation to the golf course and any Private Amenity:
- (1) Reasonable access to the golf course and any Private Amenity for the purposes of promotion, marketing, and sale of the Property and/or services;
 - (2) Right to develop the air rights over or above any area within any structure, including the right, at its sole cost and expense, to construct and to operate or to contract or to lease for operation a restaurant and the right to reasonable use at reasonable times of parking facilities in support thereof.
- m. Equestrian Park and Horses – Assumption of Risk – Release, Waiver and Indemnity. Anything to the contrary notwithstanding, all Owners and Occupants acknowledge, by accepting a deed or other document of conveyance or transfer to, by taking possession of a Lot/Unit, that land designated as an Equestrian Park may be contained within the Project which creates certain inherent risks, to wit: those dangers or conditions which are an integral part of the riding, keeping, grazing and corralling of horses, including but not limited to the risk of injury to the horses, or to third persons or property resulting from, including that which may be caused by or result from negligence. For purposes of this section, the term “injury” is intended to mean any bodily harm or property damage. No Owner or Occupant, nor their family members, guests or invitees may make any claim against or recover from the Developer, Association or Board for any loss, damage or liability for any injury resulting from, caused by or arising out of any of the inherent risks of living by land in which horses may be ridden, kept, grazed or corralled. By accepting a deed or other document of conveyance or transfer of;

or by occupying a Lot/Unit, or by entering or visiting the Project, each Owner and Occupant, as well as their family members, guests and invitees assume all risks inherent in living in or entering into a Project which contains such shall release the Developer, Association or Board from any and all claims, demands, costs, judgments, awards, actions, causes of action, suits at law or in equity, and the like for and on account of any and all injuries resulting from, any of the inherent risks of living in or visiting a Project which contains such risks, including damages caused by negligence, and shall release the Developer, Association, and Board from, any and all claims, demands, costs, judgments, awards actions, causes of action, suits at law or in equity, and the like, for an on account of any and all injuries resulting from any of these inherent risks. In addition, each Owner and occupant shall indemnify, holds harmless and save the Developer, Association or Board from any and all liability, loss or damage an Owner or Occupant, or his family members, guests and invitees may suffer as a result of any claim, demand, cost, judgment, award, actions, causes of action, suits at law or in equity, and the like resulting from any such inherent risks.

Owners and occupants further agree to notify and advise, and shall be deemed to have notified and advised, all of their visitors, guests, and invitees of these release and indemnity provisions, and their assumptions of such inherent risks, before they enter the Property.

The foregoing release, waiver and indemnity shall not relieve the owners or keepers of horses of liability for damages caused by themselves, their agents, representatives, family members, or horses.

EXHIBIT "13"
COMBINATION OF LOTS/UNITS

An owner of two or more adjoining Lots/Units shall have the right upon approval of the Board and the mortgages of said property to combine them, and to alter or amend the Declaration and Map to reflect such combination.

- a) Such amendments may be accomplished by the Owner recording an amendment or amendments to this Declaration, together with an Amended Map or Maps containing the same information with respect to the altered Lots/Units as required in the initial Declaration and Map with respect to the initial Lots/Units. All costs and expenses required in such amendments shall be borne by the Owner desiring such combination.
- b) All such amendments to the Declaration and map must be approved by attorneys employed by the Board to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorney's shall be borne by the person wishing to combine the Lots/Units.
- c) Any amendments of the Declaration or Map pursuant hereto shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Facilities which are appurtenant to the Lots/Units involved in the alterations. The remaining combined Lot/Unit, if two or more Lots/Units are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Lots/Units that are combined as set forth in Exhibit B. If a portion of one Lot/Unit is combined with another, the resulting Lot/Unit shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities of the Lots/Units involved in the combination on the basis of area remaining in the respective, combined Lots/Units. The percentage of undivided interest in the Common Areas and Facilities appurtenant to all other Lots/Units shall not be changed. All such amendments must, in all instances, be consented to by the Board and also all other Persons holding interest in the Lots/Units affected. The consent of other Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other Owners remain unchanged.
- d) Any combination of two (2) or more lots shall not affect the votes available for the Owner or dues payable by the Owner. Only one (1) water tap will be available whenever two (2) or more lots are combined to the newly combined lot.

EXHIBIT "14"
BY-LAWS
BY-LAWS OF RAINMAKERS MASTER HOMEOWNER'S
ASSOCIATION, INC., A NEW MEXICO NON-PROFIT CORPORATION

ARTICLE 1.

OFFICES

Principle Office. The Principal Office of the Corporation shall be located at 1221 Mechem, Suite 5, in the County of Lincoln, New Mexico. The Corporation may have such other offices as the Board of Directors may determine or as the affairs of the corporation may require from time to time.

ARTICLE II.

PARLIAMENTARY PROCEDURES

All special and regular meetings of the members of Rainmakers Master Homeowner's Association, Inc., shall be governed by and conducted according to Roberts Rules of Order Newly Revised in all respects in which these By-laws are silent and insofar as they do not conflict with the letter and spirit of the Article of Incorporation, these By-laws or applicable laws of the State of New Mexico.

ARTICLE III.

DEFINITIONS

The following words, when used in these By-laws (unless the context shall prohibit), shall have the following meaning:

- a. "Corporation" shall mean and refer to this non-profit corporation.
- b. "Common and Limited Common Areas" shall mean and refer to certain portions of the real estate and land (together with any improvement thereon) located in Rainmakers a Golf & Recreational Community, Lincoln County, New Mexico, which was conveyed to the Association by CDS-Rainmakers Land, L.C.
- c. "Facilities" shall mean streets, roads and other public ways, fences, gates, security systems, lighting systems, amenities to be constructed but not necessarily

included, such as a fitness center, swimming pool, Jacuzzi, pedestrian path, tennis court, children's play area and any structures used to house and maintain such equipment and associated real estate.

- d. "Subdivisions" shall mean (Development) and refer to all that certain real estate and land (together with any improvements thereon) located in Rainmakers a Golf & Recreational Community, Lincoln County, New Mexico; except the golf course property, cart paths and easements associated with same and any other Private Amenity or utility company located therein.
- e. "Lot/Unit" shall mean and refer to each numbered lot/unit shown on the recorded plats of the Subdivision and also to any plot of land shown upon any future recorded subdivision map or plat of the subdivision, or any part thereof that becomes a part of Rainmakers, a Golf & Recreational Community as a result of conversion thereof.
- f. "Residential Lot/Unit" shall mean and refer to all residential lots/units shown on the recorded plots of Rainmakers a Golf & Recreational Community, Lincoln County, New Mexico and also to any plot of land shown upon any future recorded subdivision map or plat of the subdivision or any part thereof, for which the use thereof is restricted to a Single Family Residential dwelling.
- g. "Multi-family Lot/Unit" shall mean and refer to any plot of land shown upon any subdivision map or plat of the property or any part thereof for which the applicable restrictions permit the use thereof for Multi-family housing.
- h. "Commercial Lot/Unit" shall mean and refer to any plot of land shown upon any subdivision map or plat of the property which provides or allows commercial type uses.
- i. "Owner" shall mean and refer to the record owner whether one or more persons or entities, of the fee simple title to any Lot/Unit situated upon the Property, and also to the record owner of the fee simple title to any unplatted parts of the property (Not platted of record or sold as tract acreage), but not withstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee of any lot/unit parcel pursuant to foreclosure or any proceeding in lien of foreclosure.

- j. Tenants or Lessees shall not be considered Owners, however, they may be approved for membership in the Corporation as Associate members as approved by the Board of Directors and subject to membership assessments thereof.

k.

ARTICLE IV.

RESPONSIBILITIES OF CORPORATION - IN GENERAL

Section 1. Declaration of Covenants and Restrictions Binding on Corporation. The Declaration of Restrictions executed by CDS Rainmakers Land, L.C., and filed of record in the Deed Records of Lincoln County, New Mexico, are binding on this Corporation and upon the members thereof. This Corporation and the members thereof shall be governed by all the terms of said Declaration of Restrictions.

Section 2. Functions of Corporation in General. This corporation shall have, exercise and enjoy all the rights, privileges and remedies, and shall perform all the functions and duties assigned to, delegated to, granted to and required of it by the terms and provisions of said Declarations of Restrictions, and all further rights and powers as may be appropriate under the Articles of Incorporation and these Bylaws.

ARTICLE V.

USE, OWNERSHIP, MAINTENANCE, MANAGEMENT AND CONTROL OF FACILITIES

Section 1. Service Provided. This Corporation shall provide and maintain the roads, pedestrian path, and other public ways, fences, gates, entry ways, lighting of roadways, management, landscaping, amenities, payroll taxes, property taxes and insurance of all common areas.

Section 2. Use of Facilities. Except as otherwise provided, the use and enjoyment of the Facilities is limited to those persons or entities who are members including tenants or lessees even though assessments are not directly paid by said tenants/lessees of this Corporation, as

hereinafter set forth, and their respective families and guests, subject to the Rules and Regulations for use of Facilities hereof.

Section 3. Regulations for Use of Facilities. Such rules and regulations as may be necessary for the orderly use and management of said Facilities, including, but not limited to, rules and regulations concerning the rights and privileges of members and guests of members, shall be made by the Board of Directors of this Corporation as they deem necessary.

Section 4. Management of Facilities. This Corporation, by and through its Board of Directors, has responsibility for the ownership, maintenance, improvements, management, administration and regulation of said Facilities. The funds for such purposes shall be secured by the Corporation from the annual dues assessments as hereinafter provided. This Corporation may provide for additional special assessments as and when warranted subject to the concurrence of the membership as defined within the Corporation Documents. The Corporation may also provide for special charges to be paid by lessees for use of the Common and Limited Common Areas. Also, the Corporation may require Tenants and Lessees to make a security deposit of a reasonable amount to insure payment of debts due the Corporation that may have been incurred by said Tenant or lessees. In no case shall the Board of Directors commit the membership to any indebtedness or special assessment without a 2/3 vote of the approval by the membership.

ARTICLE VI. MEMBERS AND VOTING RIGHTS

Section 1. Requirements for Membership. Every person or entity will be accepted as a member of the Corporation upon the consummation of any purchase or transfer to such person or entity or any record ownership of a fee interest in any lot/unit included within Rainmakers, a Golf & Recreational Community, pursuant to the laws of the State of New Mexico. Membership in the Corporation, shall at all times require that a person or entity both: (1) Complete a registration form providing information required for the proper maintenance of corporation records, and (2) be a record owner of a fee interest in any Lot/Unit; as herein described which is subject by covenant of record to assessments by the Corporation; provided however, that any such person or entity who holds such interest merely as security for the performance of any

obligation shall not be a member. In the event, a lot/unit is owned (1) jointly by two or more persons or entities, or (2) by a corporation, partnership, proprietorship or other business entity, such joint owners or business shall designate in writing one person who shall be recognized as the "Member" for the purpose of using the Common Areas and Facilities with respect to that Lot/Unit. Upon approval for membership, such member, spouse, and family shall be accorded the same privileges and be subject to the same rules and regulations as any individual lot/unit owner.

Section 2. Voting Rights of Members. Members of the Corporation shall be granted one vote for each Lot/Unit. Any member who is more than thirty days delinquent in the payment of any assessments and/or charges due the corporation shall be ineligible to vote at any meeting of the Corporation until such assessments and/or charges are paid in full. Owners of Lots/Units not subject to assessment shall not be granted a vote for such Lots/Units. Members shall be allowed to vote by proxy as defined herein.

Section 3. Commercial, Multi-Family or Private Amenity Voting Rights. Any commercial, multi-family or private amenity included within the Project shall be granted voting rights based upon its pro-rata share of expenses as agreed to by the Board of Directors and the individual development at the time it is included in the project, or as such may be later adjusted by the Board of Directors.

Section 4. Association Membership. The Association or Owners may request that lessees or tenants of lots/units apply for Associate membership in the Corporation and be accepted as an Associate Member in the Corporation. A lessee or tenant shall pay to the corporation a monthly Association Membership fee, in the amount to be set by the Corporation. If such a request is made no lease of any lot/unit shall be extended unless and until the lessee and/or tenant has applied for and been accepted as an Associate Member of the Corporation. In the event of a failure to comply with the terms of this provision, the membership rights of the owner of a leased lot/unit shall be subject to suspension in accordance with the terms of these Bylaws, and the lessee of said lot/unit shall be prohibited from using any of the facilities. Associate Members shall have no voting rights.

ARTICLE VII. MEETING OF MEMBERS

Section 1. Annual Meeting of Members. An annual meeting of the members shall be held on the first Saturday of the month of August in each year, to commence at an hour to be set by the Board of Directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of New Mexico such meeting shall be held on the next succeeding business day. If the election of Directors shall not be held on the day designated herein for any annual meeting, or any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special Meetings of the members may be called by the President, the Board of Directors, or by the Members holding the voting rights to not less than 1/10th of the total votes outstanding as defined in Article VI, Section 2. Special Meeting should be called on a Saturday when all members have time to attend meeting.

Section 3. Place of Meeting. The Board of Directors may designate any place as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of the meeting shall be the registered office of the Corporation in the State of New Mexico; but if a 2/3 majority of the members and the Board of Directors shall meet at any time and place and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of any meeting of members shall be delivered, either personally or by mail to each member entitled to vote at such meeting, not less than thirty (30) or more than sixty (60) days before the date of such meeting, by or at the direction of the President, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the

Corporation, with postage thereon prepaid. All notices required to be given under these Bylaws may be waived in writing by the person or entity entitled to receive such notice.

Section 5. Informal Action by Members. Any action required by law to be taken at a meeting of the member, or any action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by a 2/3 majority of the members entitled to vote with respect to the subject matter thereof.

Section 6. Quorum. Members holding 50% of the total votes, in person or by proxy, of the Corporation shall constitute a quorum at such meeting. If a quorum is not present in accordance with the foregoing, then a meeting may be called within twenty-four (24) hours of the previous meeting, and at such meeting 25% of the total votes, in person or by proxy, of the Corporation shall constitute a quorum.

Section 7. Procedures for Electing Directors:

1) At least ninety (90) days before the annual Meeting, the Board shall appoint a Nominating Committee of three (3) members, two (2) or more of whom shall be non-board members.

2) Announcement of the Nominating Committee appointment shall be made by the Board to the membership by mail at least sixty (60) days before the Annual Meeting. Members of the Nominating Committee shall be Members of the Corporation.

3) At least thirty (30) days before the Annual Meeting, the Nominating Committee shall announce to the membership by mail the names and occupations and other pertinent personal data of its nominees.

4) Thereafter, additional nominations may be made by the membership at large by submitting the names and occupations and other pertinent personal data of such additional proposed Board members accompanied by the written endorsement of five (5) different members (only one endorser per lot/unit owner will be recognized). Such additional nominations must be received at the Corporation office not later than twenty (20) days prior to the meeting in order to qualify.

5) The Nominating Committee shall nominate at least the number of vacancies to be filled, plus any additional nominees provided by way of the preceding paragraph and this shall constitute the slate to be voted on and their names shall be placed on the ballot.

6) The Board shall designate the time and place for voting, providing that the place shall on the premises of the Corporation or other convenient meeting place, and the period of time for voting shall be at least one hour preceding the time set for the Annual Meeting to convene, voting to cease at the time the meeting convenes. The Board shall establish such other voting procedures as are necessary for a fair and orderly election. Ballots are to be retained for three (3) years.

7) The Nominees receiving the most votes shall be elected to the available Board seats. The nominees receiving the next highest number of votes taken in descending order shall be elected to serve out the term of any directorship vacant by virtue of death, resignation or disability, again using descending order in the number of years remaining on the vacant directorship.

8) The Board or Directors shall appoint an Election Committee of three (3) judges, no more than one of whom shall have been on the Nominating Committee and no more than one of whom shall be a member of the Board of Directors. Such Committee shall count and/or supervise the counting of ballots and certify in writing to the corporate Secretary the results of the election.

ARTICLE VIII. BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Corporation shall be managed by its Board of Directors.

Section 2. Number. Tenure and Qualification. The number of Directors shall be no less than five (5) and shall serve for three (3) year terms each. Each director shall hold office for the designated term until his successor shall have been elected and qualified.

At the first annual meeting election, staggered terms shall be determined by drawing for one (1) - three (3) year term; two (2) - two(2) year terms; and two (2) - one (1) year terms. Thereafter, all elections should be for three (3) year terms.

No person shall be eligible to be nominated, elected or appointed to succeed himself as a Director after serving three (3) consecutive years. He may become eligible for election after remaining off the Board for one (1) year.

Anyone or more of the Directors may be removed, either with or without cause, at any time by act of the Directors at any meeting of the Directors called for that purpose, or by majority vote of a quorum present at any general meeting of the members, or special meeting of the members called for that purpose.

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this By-Law, immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings of the Board without other notice than resolution. There shall be a regular midyear Board meeting in the month of November each year, such meeting being open to the Corporation members; notice of such regular meeting shall be delivered, either personally or by mail in the monthly bulletin or otherwise to each member not less than twenty (20) days or more than sixty (60) days before the date of such meeting. This meeting shall be for the purpose of reviewing and approving the annual budget for the succeeding year and any other business deemed appropriate by the Board of Directors at said time.

Section 4. Order of Business. The order of business at all meetings of the Members shall be set forth in Robert's Rules & Orders which shall also be the guide for parliamentary decisions and rules.

Section 5. Special Meeting. Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meeting of the Board called by them.

Section 6. Notice. Notice of any special meetings of the Board of Directors shall be given at least two days prior, by written notice delivered personally or sent by mail or telegram to each Director at his address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon repaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because

the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these By-laws.

Section 7. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 8. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these By-laws.

Section 9. Vacancies. Any vacancy in the Board of Directors shall be filled by the Board of Directors. However, any appointed Directors shall be selected in descending order from the nominees receiving the next highest number of votes at the preceding annual election. All appointed Directors will serve only until the next regular annual meeting.

Section 10. Compensation. Directors as such shall not receive monetary compensation for their services as Directors or in any other capacity.

Section 11. Informal Action by Directors. Any action required by law to be taken at a meeting of the Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Directors.

Section 12. Executive Committee. There shall be one Executive Committee composed of the President, the Vice-President and Secretary/Treasurer. It shall have all the power and shall exercise all of the duties and responsibilities of the Board of Directors, subject to such limitations as the Board of Directors may impose. The Executive Committee shall meet whenever called by anyone member thereof and the notices for such meeting shall be the same as special directors meetings.

Section 13. Limitation on Capital Expenditures. No work or expenditures for Capital Additions and Improvements will begin prior to the approval of a Capital Additions and Improvements budget by 2/3 majority of the members of the corporation voting at any regular or

special called meeting of the members at which a quorum is present. "Capital Additions and Improvements" related to land, buildings, equipment and improvements beyond those currently Existing but does not relate to assets which need replacement because of obsolescence of wear or tear.

ARTICLE IX. OFFICERS

Section 1. Officers. The officers of the Corporation shall be a President, Vice-President, Secretary/Treasurer and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such other officer, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person, except for offices of President and Secretary.

Section 2. Election and Term of Office. The officers of the Corporation shall be elected each year by the Board of Directors at the regular annual meeting of the Board of Directors, a person shall not be elected an officer, nor shall he be qualified to serve as an officer unless such person is a duly elected member of the Board of Directors. If the election of officers shall not be held at such meeting, such offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have qualified.

Section 3. Removal. Any officer elected or appointed to the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, shall be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the members and of the Board of Directors. He

may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board of Directors, any deed, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Laws or by statute to some other officer or agent of the Corporation; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice-President. In the absence of the president or in the event of his inability or refusal to act, the Vice-President, shall perform the duties of the President, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Treasurer. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of these duties in such sum and with such surety or sureties as the Board of Directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for monies due and payable to the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article X of these Bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporation records and of the seal of the Corporation and see that the seal of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; keep a register of the post office address of each member which shall be furnished to the Secretary by such member; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 9. Assistant Treasurers and Assistant Secretaries. If required by the Board of Directors, the Assistant Treasurers shall give bonds for the faithful discharge of their duties in

such sums and with such sureties, as the Board of Directors shall determine. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or the Secretary or by the President or the Board of Directors.

ARTICLE X. COMMITTEES

Section 1. Membership Committee. The Board of Directors shall appoint a Membership Committee. The Membership Committee shall receive all applications for membership, make such investigation as appears necessary to the Committee, act pursuant to the Bylaws and the rules of procedure which may be adopted by the Board of Directors and shall report in writing its recommendations as to the admission of applicants, to the Board of Directors for action. It also shall have charge of all matters pertaining to resignation, cancellations, suspensions and transfers in classifications and shall make written recommendations pertaining to the same to the Board of Directors, who shall have full and formal authority to act with respect thereof. The Chairman of the Membership Committee shall be a member of the Board of Directors. Authority to approve applications for membership may be delegated by the Board of Directors to the Membership Committee.

Section 2. Architectural Control Committee. The Board of Directors shall appoint the Architectural Control Committee. The Architectural Control Committee shall receive and review all building plans within the Subdivision and may deny, approve, or approve with conditions of compliance with a grand standard of building design and quality required by the applicable Restrictive Covenants governing the subdivision.

- i. The Committee shall act with all due promptness. In the event the Committee shall fail to approve or to disapprove any matters submitted to it hereunder within forth-five (45) days from such submission, then the submission shall be deemed to have been approved and this section of these restrictive covenants shall be deemed to have been fully complied with.

- ii. Failure of Association to Insist on Strict Performance: No Waiver. The failure of the association to insist, in anyone or more instances, upon the strict performance of any of the covenants, conditions, or restrictions of this amended Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or relinquishment for the future, of such term, covenant, condition or restriction but such term, covenant, condition, or restriction shall remain in full force and effect. The receipt by the Association of payment of any assessment from any Owner, with knowledge of the breach of any covenant hereof, shall not be deemed as a waiver of such breach, and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.
- iii. All plans and specifications for a residence or other building or other permitted structures shall be prepared by a draftsman, licensed architect or registered engineer or submitted and approved by the Committee.
- iv. The Committee may withhold its approval of any plans for any of the following reasons:
- v. Noncompliance with any of the specific conditions and restrictions contained in these Restrictive Covenants; or
- vi. Reasonable dissatisfaction of the Committee with the location of the structure on the building site, or with the appearance of the proposed structure, landscaping plan or with the Lot grading plan, (having in mind the character of the neighborhood in which it is proposed to be erected) the materials surrounding and the effect of the building or other structures as planned on the outlook from the adjacent or neighboring properties.
- vii. The real property subject to these covenants shall be subject to the architectural review process of the Architectural Control Committee and any independent architect or land planner consulted by the Committee shall be entitled to charge the then owner a standard sum not to exceed

\$150.00 for services performed relating to the approval of plans submitted for any one (1) building, in accordance with these covenants. The \$150.00 fee may be raised each year, commencing one (1) year from the recording date of these covenants and each year thereafter by the percentage increase in the National Consumer Price Index (CPI) for all items published by the Bureau of Labor Statistics of the U.S. Department of Labor.

- viii. The underlying principle of the Architectural Control Committee function is to maintain the integrity and uniqueness of the areas described in these Unified Covenants. The Committee may grant variances, "Red Flag" stop work on the project until such time as it is brought into compliance, any project or cause such action to be taken by a building inspector in case of a violation, recommend suspension of membership to the Board of Directors or file suit for injunctive relief. A duly appointed inspector is the authorized representative of both the Board of Directors and the Architectural Control Committee.

Section 3. Additional Committees. The Board of Directors may, from time to time, by resolution create and designate one or more other committees as may be necessary or advisable in the orderly management of the Corporation. Except as may be otherwise provided in such resolution, the members of such other committee shall be appointed by the Board of Directors and the Chairman of such committee shall be a member of the Board of Directors. No committee or any member thereof shall have any authority to act on behalf of the Corporation, the Board or Committee, and the Committee shall act only in an advisory capacity to the Board. The Board of Directors cannot delegate its responsibility to any committee and any delegated authority shall not relieve the Board of Directors nor its individual members from the responsibility imposed on it, him or her by these Bylaws or by law.

Section 4. General Provisions.

- (a) Each member of a committee shall continue in office until the next annual membership meeting and thereafter until his successor is appointed, unless such member shall be removed from the committee or the member shall cease to qualify as a member, or the Committee is abolished.

- (b) The Board of Directors shall appoint the Chairman of each committee from its membership.
- (c) The Board of Directors shall by appointment fill any vacancies that appear in the membership of any committee.
- (d) Each committee may adopt rules for its own government so long as such rules are not in conflict with these Bylaws, rules or resolutions adopted by the Board of Directors, or the Declarations of Restrictions, and subject to approval by the Board of Directors.

ARTICLE XI.

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board of Directors may authorize any officer, agent or agents of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. No officer, Director, member, employee or agents of the Corporation is authorized to execute contracts or commit any expenditure of funds without such authorization. Anything herein to the contrary notwithstanding, no sale, disposition, mortgage or pledge as security for any loan or indebtedness of the Common and Limited Common Area or Rainmakers Master Homeowner's Association property as denied herein shall be made unless such action has been authorized by the affirmative and written vote of at least sixty seven percent (67%) of the total number of voting members of the Corporation present at any meeting held under the terms hereof at which there is a quorum present.

Section 2. Checks. Drafts. Etc. All checks, drafts, or orders for the payment of many, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such manner as shall from time to time be determined by resolution of the Board of Directors. In the absences of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice-President of the organization.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may elect.

Section 4. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution gift, bequest or devise for the general purpose or for any special purpose of the Corporation.

ARTICLE XII. MEMBERSHIP CARDS

The Board of Directors may provide for the issuance of membership cards evidencing membership in the Corporation, which shall be in such form as may be determined by the Board. Such cards evidencing membership shall be numbered. The names and addresses of each member and the date of issuance of the card shall be entered on the records of the Corporation. If any card shall become lost, mutilate or destroyed, a new card may be issued therefore upon such terms and conditions as the Board of Directors may determine.

ARTICLE XIII. BOOKS AND RECORDS

Section 1. Records. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Corporation may be inspected by any member, or his agent or attorney for any proper purpose at any reasonable time.

Section 2. Accountants. The Board of Directors each year shall engage an independent certified public accountant(s) to examine the annual financial statements of the Corporation and express and opinion thereof in a report to be delivered within sixty (60) days after the close of the fiscal year of the Corporation.

Section 3. Annual Report. An Annual Report, including audited financial statements is to be mailed to all members at least ten days prior to the date of the annual meeting. Such

Annual Reports shall include comments of the President and the Board of Directors and the annual operating budget for the ensuring year in the same form and compared with the actual results for the year reported. The proposed budget of capital additions and improvements for the ensuring year, to be voted upon at the annual meeting, as provided by Arctic VII, Section 12, shall also be included in the Annual Report.

The Fiscal year for the corporation shall begin on the first day of January and ends on the last day of December in each year.

ARTICLE XIV. ASSESSMENTS IN GENERAL

Section 1. Corporation to Make Assessments. By virtue of the authority delegated to it and subject to the provisions of this Declaration of Restrictions, heretofore described in Article IV of these said covenants, the Board of Directors of this Corporation may fix, levy, and collect annual assessments or charges.

Section 2. Parts of Property Not Assessed. There shall be no assessment whatsoever against any unsold and unimproved lots owned by CDS Rainmakers Land, L.C., or any corporation or other entity with substantially the same ownership and control in accordance with the provisions of the Declaration of Restrictions. Lots once sold and which shall in some manner later be acquired by CDS Rainmakers Land, L.C., shall not be exempt from assessment.

Section 3. Purpose of Assessments. The assessments levied by the Corporation shall be used for the purpose of the improvement, maintenance, management and administration of the "Facilities". Including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials management and supervision thereof, and for the expenses of administering and enforcing the Declarations of Restrictions heretofore mentioned in Article IV and for carrying out the purposes of the Corporation as stated in Article of Incorporation.

Section 4. Date of Commencement of Assessments. The annual assessments provided for herein shall commence at closing and be pro-rated to the anniversary date as set forth in the

Bylaws. Assessments shall be paid annually in advance on or behalf the first day of the first month of each calendar year.

Section 5. Duties of the Board of Directors.

- (a) The Board of Directors of the Corporation shall fix the date of commencement and the amount of assessment, if any is so fixed, against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Corporation and shall be open to inspection by any member.
- (b) Written notice of the assessment shall be sent to every member subject thereto is such assessment has been increased from the last assessment period.
- (c) The Corporation shall upon demand at any time furnish to any member liable for said assessment, or to any first mortgage holder of any properties liable for said assessment, a certificate in writing signed by an officer of the Corporation, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6. Effect of Non-Payment of Assessments, Charges and Fines; the Personal Obligation of the Owner; the Lien; Remedies of the Corporation.

- (a) If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, and all other charges, fines or monies owed to the Corporation by said owners thereupon become a continuing lien upon the Lots assessed which shall bind such property in the hands of the then owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then owner to pay such assessment and charges however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.
- (b) If the assessment, charges and fines are not paid within thirty (30) days after the due date, the assessment and charges shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum or the maximum

allowed by law, whichever is the least and the Corporation may bring an action at law, against the owner personally obligated to pay same or to foreclose the lien against the property, and there shall be added to the amount of such assessments the cost of preparing and filing the complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action.

- (c) In the event the Corporation, through its Board of Directors decides to take title to any such property, by purchase at a trustee's sale or otherwise, then in that event, the Corporation shall have authority to sell the same, subject to approval of the Board of Directors and subject to all other provisions of these Bylaws and subject to all restrictions and covenants.

Section 7. Subordination of the Lien to Mortgages. The lien of any assessment, charges or fines provided for herein shall be subordinate to the lien of any duly recorded first mortgage or first deed of trust now or hereinafter placed upon the property subject to assessments; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale of any such property pursuant to a decree of foreclosure of any such mortgage or pursuant to the sale thereof under power of sale in any such deed of trust. Such sale shall not relieve the property from liability for any assessment thereafter becoming due nor from the lien of any such subsequent assessment.

ARTICLE XV.

PRIVATE ROAD ASSESSMENTS

Section 1. Basis of the road Repair and Maintenance Charge.

- (a) The road repair and maintenance charge referred to shall be used to create a fund to be known as the "road repair and maintenance fund", which shall be used for the repair and maintenance of the private roadway easements as deemed necessary by the Board of Directors of the Homeowner's Association; and each such road repair and maintenance charge shall be paid by the Owner of each Lot

to the Association. The road repair and maintenance charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year.

- (b) Any road repair and maintenance charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) annum; or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay, the same or foreclose the hereinafter described lien against the Owner's Lot/Unit. No owner may waive or otherwise escape liability for the road repair and maintenance charge by non-use of the private driveway easement or by abandonment of the Lot or the private driveway easement thereon.
- (c) The initial amount of the road repair and maintenance charge applicable to each Lot/Unit will be One hundred and 00/100 (\$100.00) dollars annually. All other matters relating to the road repair and maintenance charge and the collection, expenditures and administration of the road repair and maintenance charge shall be determined by the Developer or the Board of Directors of the Association, subject to the provisions hereof.
- (d) The Developer shall function as the Board of Directors of the Association until such time as the Developer has conveyed 50% of the Lots/Units entitled to membership in the Association as set forth herein. At such time as Developer sells 50% of the Lots/Units, Developer shall cease to function as the Board of Directors of the Homeowner's Association.
- (e) The Homeowner's Association, at any time after Developer no longer functions as the Board of Directors of the Association, shall have the right at any time, with the majority vote of all Association Members, to adjust or alter said road repair to meet the reasonable operating expenses and reserve requirements under no circumstances will the reserves for road maintenance fall below one year's annual assessment.

Section 2. Creation of Lien and Personal Obligation. In order to secure the payment of the road repair and maintenance charge, and other charges and assessments hereby levied, each

member of the Homeowner's Association grants to the Homeowner's Association a contractual lien on the member's Lot which may be foreclosed pursuant to law and in the manner in which the laws of the State of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Homeowner's Association shall be entitled to reasonable attorney's fees, and cost of foreclosure. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible entry and detainer.

In the event of non-payment by such member of any road repair and maintenance charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such non-paying member, exercise all other rights and remedies available at law or in equity.

Section 3. Notice of Lien. In addition to the right of the Association to enforce the road repair and maintenance charge or other charges or assessments levied hereunder, the Association may file a claim or lien against the Lot of the delinquent member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency; (b) the interest thereon; (c) the costs of collection which have accrued thereon; (d) the legal description and street address of the Lot against which the lien is claimed; and (e) the name of the member/owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of said Association. The lien shall continue until the amount secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the member of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instruments.

Section 4. Liens Subordinate to Mortgages. The lien described in Section 2 shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trust or plan, or any other third party

lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot/Unit affected hereby, and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot/Unit, who obtains title to such Lot/Unit pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure, shall take title to the Lot/Unit free and clear of any claims for unpaid road repair and maintenance charges or other charges or assessments levied against such Lot which accrued prior to the time such holder acquired title to such Lot/Unit. No sale or transfer shall relieve such holder from liability for any road repair and maintenance charge or other from liability for any road repair and maintenance charge or other charges or assessments thereafter becoming due, or form the lien thereof. Any other sale or transfer of a Lot/Unit affected by the private driveway easement as set forth herein shall not affect the Homeowner's Association for road repair and maintenance charges or other charges or assessments. The Homeowner's Association shall make a good faith effort to give such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of lien, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or certified mail, return receipt requested, and shall contain a statement of delinquent road, repair and maintenance charges or other charges or assessments upon which the proposed action is based, provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association.

Section 5. Purpose of the Road Repair and Maintenance Charges. The road repair and maintenance charges levied by the Association through its Board of Directors shall be used exclusively for the purpose of maintaining and repairing the private driveway easement to the extent deemed necessary by the Board of Directors. It is understood that the judgment of the Board of Directors of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6. Handling of Road Repair and Maintenance Charges. The collection and management of the road repair and maintenance charges, or other charges or assessments levied hereunder, shall be performed by the Board of Directors of the Association. The Board of Directors shall maintain separate special accounts for these funds, and members shall be provided at least annual information on the road repair and maintenance fund.

Section 7. Developer's Right to Use Private Driveway Easement for Promotion and Marketing of the Property. Developer shall have and hereby reserves the right to reasonable use of the private driveway easement in connection with the promotion and marketing of Lots/Units affected by the private driveway easement. Further, Developer may permit prospective purchasers of such Lots/Units, who are not owners or members of the Association, to use the private driveway easement at reasonable times and in reasonable numbers.

Section 8. Developer's Deposit. To insure adequate reserves for road maintenance, repairs and snow removal, the developer will fund one year's maintenance assessment on behalf of future owners in an approximate amount of \$25,000.00. Said funds will be used as ongoing expenses for repairs, maintenance and snow removal. At the anniversary date of road assessments, developer shall be responsible for up to \$25,000.00 and shall be obligated for same until the Association contributions equal the stated reserves. At such time as the Association, has generated sufficient funds to meet the reserve requirements at any anniversary date of assessments then said Association shall refund any excess deposits above operating expenses the Developer has paid. Said refund to Developer shall not reduce the reserve account below the specified amount.

Section 9. Retention of Funds. Under no condition may any funds deposited for road maintenance and repair be diverted to any other operating expenses of either the Developer or Association.

Section 10. Abatement of Assessment. Neither the developer not the Association shall have the authority to discontinue road assessments irregardless of the amount of the funds accumulated.

ARTICLE XVI.

COMMON AREA MAINTENANCE FUND

Section 1. Maintenance Fund Obligation. Each Owner of Lot/Unit by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association a monthly maintenance charge (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon

and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot/Unit and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 2. Basis of the Maintenance Charge.

- (a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used to maintain the Common Area within the subdivision and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the month of each calendar year.
- (b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot/Unit. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common or Limited Common Areas available for use by Owners of the Subdivision or by the abandonment of his Lot/Unit.
- (c) The initial amount of the Maintenance Charge applicable to each Lot/Unit will be. All other matters relating to the Maintenance charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provisions hereof

Section 3. The Association, from and after the Control Transfer Date, shall have the further right at any time, with a majority vote of all Association members, to adjust or alter said Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 4. Creation Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Lot/Unit in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot/Unit which may be foreclosed pursuant to law and in manner in which the laws of the State of New Mexico provide for the foreclosure of mortgages. In addition to the amount of the lien foreclosed, the Association shall be entitled to reasonable attorney's fees and costs of foreclosure. Following any such foreclosure, each occupant of any such Lot/Unit foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible entry detainer. In the event of non-payment by any Owner of any Maintenance charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days' prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

Section 5. Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charges or assessments levied hereunder, the Association may file a claim or lien against the Lot/Unit of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency; (b) the interest thereon; (c) the costs of collection which have accrued thereon; (d) the legal description and street address of the Lot/Unit against which the lien is claimed; and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments, which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instruments.

Section 6. Liens Subordinate to Mortgages. The lien described in this Article shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and

Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment is exercised in good faith.

Section 8. Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charges or assessments levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records and receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided, at least, information on the Maintenance Fund.

ARTICLE XVII. WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the New Mexico Non-Profit Corporation Act or under the provisions of the Articles of Incorporations or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XVIII. AMENDMENTS TO BYLAWS

Section 1. Amendments to Bylaws. These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by the vote of a majority of the members of the Corporation present at any regular or special meeting of the members at which a quorum is present, provided that not such proposal to alter, amend, repeal or enact new Bylaws shall be entitled to be voted on at such meeting unless the written notice of such proposal hereinafter provided for shall have been given.

Section 2. Notice. Written notice of proposals to alter, amend, repeal or enact new Bylaws shall be given to the members not less than thirty (30) days and not more than fifty (50) days prior to the membership meeting at which the proposal is to be presented. Such notice shall

state the substance of the proposed change, alteration or amendment (or state same verbatim) and shall briefly state the proponent's reasons therefore.

Section 3. Member Proposal. Any such proposal to be made by the membership at large shall be submitted in writing to the Board, and shall be accompanied by the written endorsement of ten percent (10%) of the membership (only one endorser per lot/unit), at least sixty (60) days prior to the membership meeting at which the proposal is to be presented. It shall then be the duty of the Board to include notice of such proposal in the notice of the meeting given to the members.

ARTICLE XIX.

REGULATIONS TO PROTECT LIFE, HEALTH AND PROPERTY

Section 1. No person shall drive a motor-driven vehicle on the streets or roads of the subdivision unless such person shall have in his possession of a valid operator's license or permit as defined by the laws of the State of New Mexico.

Section 2. No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions then existing, and in no event in excess of 25 miles per hour, in the subdivision.

Section 3. Motor bikes, motor scooters, motorcycles and similar vehicles shall be driven only on streets and roads and not on private property of others or further, such vehicles shall be driven only as a method of transportation from point to point.

Section 4. Golf carts shall be driven only on the golf course and on the streets and roads as a method of transportation to and from the golf course.

Section 5. Every motor vehicle must have a muffler and/or other device in good working order which shall at times be in constant operation to prevent excessive or unusual noises and annoying smoke.

ARTICLE XX.

INDEMNIFICATION & LIABILITY OF OFFICERS & DIRECTORS

Section 1. Indemnification of Officers and Directors. Any an all of this corporation's directors or officers or former directors or officers shall be indemnified against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or officers or a director or officer of this corporation, except in relation to matters as to which any such director or officer or former director or office or persons shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of duty. The foregoing right to indemnify shall include reimbursement of the amounts and expenses paid in setting any such action, suit or proceeding, when settling or a plea of no contender appears to be in the interest of the corporation.

Section 2. Limitation of liability of Directors. No director of the corporation shall be personally liable to the corporation or any of its members for monetary damages for an act or omission in the director's capacity as a director except that this Article does not eliminate or limit the liability of a director for: (1) a breach of director's duty of loyalty to the corporation or its members; (2) an act or omission not in the good faith or that involves intentional misconduct or knowing violation of the law; (3) a transaction from which a director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office, or (4) an act or omission for which the liability of a director is expressly provided for by statute. Neither the amendment nor the repeal of this Article, nor the adoption of any provision of the Articles of Incorporation' inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suite or claim that, but for this Article, would accrue or arise prior to such amendment, repeal or adoption of any inconsistent provision. If, after approval by the members of this Article, the New Mexico Non-Profit Corporation Act or the New Mexico Miscellaneous Corporation Laws Act are amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the New Mexico Non-Profit Corporation Act or the Miscellaneous Corporation Laws Act, as so amended from time to time.

EXHIBIT "15"
LEGAL DESCRIPTION

DESCRIPTION:

A TRACT OF LAND IN THE S/2 OF SECTION 11, THE SE/4 SE/4 OF SECTION 18, THE E/2 NE/4, SE/4 OF SECTION 19, THE N/2, N/2 S/2 OF SECTION 20 AND THE N/2, N/2 S/2 OF SECTION 21, T 10 S, R 14 E, N.M.P.M., LINCOLN COUNTY, NEW MEXICO, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

STARTING AT THE SECTION CORNER COMMON TO SECTIONS 16, 17, 20 AND 21 AND GOING S 89° 51'11" E A DISTANCE OF 970.12 FEET; THENCE S 00°09'41" W A DISTANCE OF 13.71 FEET TO THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;
THENCE S 66°21'01" E A DISTANCE OF 102.88 FEET; THENCE S 85°49'41" W A DISTANCE OF 146.42 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS

11°37'03" AND WHOSE RADIUS IS 683.92 FEET AN ARC DISTANCE OF 138.67 FEET (CHORD=S 80°01'09" W-138.44 FEET);

THENCE S 74°12'38" W A DISTANCE OF 787.67 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 18°56'43" AND WHOSE RADIUS IS 624.32 FEET AN ARC DISTANCE OF 206.44 FEET (CHORD=S 83°41'00" W-205.50 FEET);

THENCE N 86°53'20" W A DISTANCE OF 310.97 FEET; THENCE S 00°19'17" W A DISTANCE OF 112.73 FEET; THENCE S 61°24'46" W A DISTANCE OF 370.00 FEET; THENCE S 31°46'14" W A DISTANCE OF 250.00 FEET; THENCE SOUTH A DISTANCE OF 246.66 FEET;

THENCE N 59°31'28" W A DISTANCE OF 201.52 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 172°50'53" AND WHOSE RADIUS IS 50.00 FEET AN ARC DISTANCE OF 150.84 FEET (CHORD=S 87°34'15" W-99.81 FEET);

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 42°46'08" AND WHOSE RADIUS IS 30.00 FEET AN ARC DISTANCE OF 22.39 FEET (CHORD=N 27°23'23" W-21.88 FEET);

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 09°31'43" AND WHOSE RADIUS IS 401.85 FEET AN ARC DISTANCE OF 66.83 FEET (CHORD=N 44°07'55" W-66.75 FEET);

THENCE S 50°12'25" W A DISTANCE OF 96.27 FEET;

THENCE N 27°35'43" W A DISTANCE OF 291.84 FEET;

THENCE N 60°11'05" W A DISTANCE OF 600.00 FEET;

THENCE N 00°31'28" W A DISTANCE OF 90.00 FEET;

THENCE S 89°28'32" W A DISTANCE OF 180.00 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 12°57'36" AND WHOSE RADIUS IS 600.72 FEET AN ARC DISTANCE OF 135.88 FEET (S 25°57'20" W-135.59 FEET);

THENCE S 46°01'28" E A DISTANCE OF 312.14 FEET;

THENCE S 43°58'32" W A DISTANCE OF 900.00 FEET;

THENCE S 47°46'18" E A DISTANCE OF 699.10 FEET;

THENCE S 71°49'55" E A DISTANCE OF 514.93 FEET;

THENCE S 13°54'25" W A DISTANCE OF 540.00 FEET;

THENCE N 89°24'04" W A DISTANCE OF 750.00 FEET;

THENCE S 00°47'33" E A DISTANCE OF 764.19 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 34°07'37" AND WHOSE RADIUS IS 368.89 FEET AN ARC DISTANCE OF 219.72 FEET (CHORD=N 83°22'43" W-216.49 FEET);

THENCE N 31°29'45" W A DISTANCE OF 260.00 FEET; THENCE S 77°10'50" W A DISTANCE OF 175.00 FEET; THENCE S 60°03'24" W A DISTANCE OF 275.00 FEET; THENCE S 43°03'34" W A DISTANCE OF 308.59 FEET; THENCE N 86°34'51" W A DISTANCE OF 1030.00 FEET; THENCE N 01°10'33" W A DISTANCE OF 1349.12 FEET; THENCE N 34°26'55" E A DISTANCE OF 190.43 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 25°21'28" AND WHOSE RADIUS IS 914.00 FEET AN ARC DISTANCE OF 404.51 FEET (CHORD=N 21°46'11" E-401.22 FEET);

THENCE N 09°05'28" E A DISTANCE OF 416.12 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 16°38'46" AND
WHOSE RADIUS IS 658.55 FEET AN ARC DISTANCE OF 191.33 FEET (CHORD=N 17°24'51" E-190.66 FEET);
THENCE N 25°44'13" E A DISTANCE OF 431.46 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 11°03'11" AND
WHOSE RADIUS IS 641.93 FEET AN ARC DISTANCE OF 191.08 FEET
(CHORD N 34°15'52" E-190.37 FEET);
THENCE N 42°47'34" E A DISTANCE OF 241.02 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 12°38'00" AND
WHOSE RADIUS IS 928.37 FEET AN ARC DISTANCE OF 204.70 FEET (CHORD=N 36°28'31" E-204.29 FEET);
THENCE N 30°09'30" E A DISTANCE OF 188.92 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS
08°16'11" AND WHOSE RADIUS IS 1267.73 FEET AN ARC DISTANCE OF 182.98 FEET (CHORD=N 34°17'36"
E-182.82 FEET);
THENCE N 39°00'18" E A DISTANCE OF 210.49 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE
IS 37°43'27" AND WHOSE RADIUS IS 10149.99 FEET AN ARC DISTANCE OF 98.76 FEET (CHORD=N
20°08'22" E-96.98 FEET);
THENCE S 88°43'34" E A DISTANCE OF 535.79 FEET;
THENCE S 00°00'05" W A DISTANCE OF 1675.22 FEET;
THENCE N 81°59'56" E A DISTANCE OF 54.04 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 14°04'12" AND
WHOSE RADIUS IS 383.75 FEET AN ARC DISTANCE OF 94.29 FEET
(CHORD=N 75°06'45" E-94.06 FEET);
THENCE N 68°03'59" E A DISTANCE OF 304.88 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 10021°13" AND
WHOSE RADIUS IS 718.33 FEET AN ARC DISTANCE OF 129.81 FEET
(CHORD=N 73°15'01" E-129.63 FEET);
THENCE N 78°25'58" E A DISTANCE OF 829.65 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 08°39'03" AND WHOSE
RADIUS IS 1080.72 FEET AN ARC DISTANCE OF 163.17 FEET (CHORD=N 82°47'12" E-163.02 FEET);
THENCE N 87°04'36" E A DISTANCE OF 349.12 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS
02°21'57" AND WHOSE RADIUS IS 9714.18 FEET AN ARC DISTANCE OF 401.11 FEET (CHORD=N 88°15'51"
E-401.09 FEET);
THENCE N 89°28'32" E A DISTANCE OF 165.48 FEET;
THENCE N 05°58'25" W A DISTANCE OF 275.42 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS
25°09'35" AND WHOSE RADIUS IS 616.65 FEET AN ARC DISTANCE OF 270.78 FEET (CHORD=N 18°33'08"
W-268.61 FEET);
THENCE N 31°07'58" W A DISTANCE OF 1049.55 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 01°09'41" AND
WHOSE RADIUS IS 5151.46 FEET AN ARC DISTANCE OF 104.56 FEET (CHORD=N 75°53'49" E-104.56
FEET);
THENCE S 31°07'58" E A DISTANCE OF 791.80 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS
25°09'55" AND WHOSE RADIUS IS 1200.04 FEET AN ARC DISTANCE OF 526.97 FEET (CHORD=S
18°33'08"-522.74 FEET);
THENCE S 05°57'05" E A DISTANCE OF 280.35 FEET;
THENCE N 89°28'32" E A DISTANCE OF 1314.60 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 03°42'14" AND
WHOSE RADIUS IS 4662.12 FEET AN ARC DISTANCE OF 301.51 FEET (CHORD=S 88°41'19" E-301.33
FEET);
THENCE S 86°53'20" E A DISTANCE OF 413.91 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS
18°56'44" AND WHOSE RADIUS IS 574.32 FEET AN ARC DISTANCE OF 189.91 FEET
(CHORD=N 83°41'00" E-189.04 FEET);
THENCE N 74°12'38" E A DISTANCE OF 787.67 FEET;
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 15°57'02" AND
WHOSE RADIUS IS 733.92 FEET AN ARC DISTANCE OF 204.32 FEET (CHORD=N 82°11'29" E) TO THE SAID
PLACE OF BEGINNING,

LESS AND EXCEPTING A TRACT OF LAND BEING A PART OF THE GOLF COURSE,
DESCRIBED BY METES AND BOUNDS AS FOLLOWS: .

A TRACT OF LAND IN THE N/2 OF SECTION 20 AND THE NE/4 OF SECTION 19, TOWNSHIP 10 SOUTH, RANGE 14 EAST, N.M.P.M., LINCOLN COUNTY, NEW MEXICO:

STARTING AT THE NORTHEAST CORNER OF SAID SECTION 20; THENCE S 83°27'26" W A DISTANCE OF 2884.05 FEET TO THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE SOUTH A DISTANCE OF 70.00 FEET;

THENCE S 58°25'21" E A DISTANCE OF 60.00 FEET; THENCE S 74°09'54" E A DISTANCE OF 60.00 FEET; THENCE S 57°05'03" E A DISTANCE OF 70.00 FEET; THENCE S 10°18'12" E A DISTANCE OF 70.00 FEET;

THENCE S 45°21'49" W A DISTANCE OF 460.82 FEET;

THENCE S 56°06'31" E A DISTANCE OF 270.11 FEET;

THENCE S 43°58'32" W A DISTANCE OF 166.83 FEET;

THENCE N 46°01'28" W A DISTANCE OF 90.00 FEET;

THENCE S 43°58'32" W A DISTANCE OF 140.00 FEET;

THENCE N 46°01'27" W A DISTANCE OF 10.00 FEET;

THENCE S 43°58'32" W A DISTANCE OF 287.59 FEET;

THENCE ALONG A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 52°56'19" AND WHOSE RADIUS IS 392.20 FEET AN ARC DISTANCE OF 362.37 FEET

(CH=S 70°26'41" W - 349.62);

THENCE S 06°54'50" W A DISTANCE OF 20.00 FEET;

THENCE N 80°05'10" W A DISTANCE OF 547.02 FEET;

THENCE ALONG A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 13°19'54" AND WHOSE RADIUS IS 1326.65 FEET AN ARC DISTANCE OF 308.69 FEET

(CH=N 86°41'25" W - 307.99);

THENCE N 04°01'28" W A DISTANCE OF 20.09 FEET;

THENCE S 85°58'32" W A DISTANCE OF 300.00 FEET;

THENCE N 04°01'28" W A DISTANCE OF 32.38 FEET;

THENCE N 80°25'00" W A DISTANCE OF 259.20 FEET; THENCE N

64°09'39" W A DISTANCE OF 239.49 FEET; THENCE N 44°31'55" W A DISTANCE OF 600.12 FEET;

THENCE N 24°47'40" E A DISTANCE OF 234.69 FEET; THENCE N

37°54'30" E A DISTANCE OF 106.80 FEET; THENCE N 68°29'19" E A

DISTANCE OF 296.06 FEET; THENCE S 47°14'06" E A DISTANCE OF 391.18 FEET;

THENCE ALONG A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 48°09'43" AND WHOSE RADIUS IS 275.00 FEET AN ARC DISTANCE OF 231.15 FEET

(CH=S 71°18'57" E - 224.41);

THENCE S 00°27'06" E A DISTANCE OF 54.16 FEET;

THENCE S 65°36'27" E A DISTANCE OF 202.78 FEET; THENCE S

84°30'49" E A DISTANCE OF 905.21 FEET; THENCE N 50°05'00" E A

DISTANCE OF 398.70 FEET; THENCE N 19°45'25" E A DISTANCE OF 246.70 FEET;

THENCE N 00°09'09" W A DISTANCE OF 123.13 FEET;

THENCE ALONG A CURVE TO THE RIGHT WHOSE CENTRAL ANGLE IS 03°30'56" AND WHOSE RADIUS IS 1030.67 FEET AN ARC DISTANCE OF 63.24 FEET

(CH=N 85°21'15" E - 63.23);

THENCE N 87°04'36" E A DISTANCE OF 304.51 FEET TO THE SAID PLACE OF BEGINNING

AND CONTAINING 40.584 ACRES MORE OR LESS,

AND LESS AND EXCEPT A TRACT REMAINING IN TITLE TO CDS RAINMAKER AND L.C, DESCRIBED AS FOLLOWS:

STARTING AT THE NORTH EAST CORNER OF SAID SECTION 20; THENCE S 64°33'07" W A DISTANCE OF 3834.07 FEET TO THE PLACE OF BEGINNING OF THE HEREIN DESCRIBED TRACT OF LAND;

THENCE S 11°24'37" E A DISTANCE OF 100.03 FEET;

THENCE N 88°54'13" W A DISTANCE OF 254.55 FEET;

THENCE N 80°01'28" W A DISTANCE OF 294.68 FEET;

THENCE N 09°58'32" E A DISTANCE OF 100.00 FEET;

THENCE S 88°01'28" E A DISTANCE OF 325.00 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTRAL ANGLE IS 19°55'00" AND WHOSE RADIUS IS 542.20 FEET AN ARC DISTANCE OF 188.48 FEET

(CHORD=S 88°58'59" E - 187.53 FEET) TO THE PLACE OF BEGINNING AND CONTAINING 1.174 ACRES MORE OR LESS.

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EXHIBIT "16"

(ADDITIONAL LAND)

The Additional Land referred to in the foregoing document as "Additional Land" is located in Lincoln County, New Mexico and is described more particularly as:

LANDS NOT PLATTED AS RAINMAKERS, UNIT ONE - FIVE

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EXHIBIT "17"
(CONVERTIBLE LAND)

The Convertible Land referred to in the foregoing document is located in Lincoln County, New Mexico and is described more particularly as:

There is no Convertible Land in the initial subdivision Plat Map.

Convertible land may be other lands owned by the developer when such land is annexed to the Project. All Convertible Land will be clearly identified and described with particularity on any Addendum to or Supplemental Plat Map and in the Supplemental Declaration at such time as it is annexed, and this Exhibit shall be amended at that time.

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LEFT BLANK]

EXHIBIT "18"
(COMMON AREA)

The land referred to in the foregoing document as Common Area is located in Lincoln County, New Mexico and is described more particularly as:

The Common Area in Unit One – Five is located in only the multi-family Tract A and is common only to owners of units in Tract A.