

Declaration of
Covenants, Conditions
and Restrictions

Cabazon-Centex
Homeowners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CABEZON - CENTEX

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS CABEZON - CENTEX (the "**Declaration**") is made on the date hereinafter set forth by **CENTEX HOMES**, a Nevada general partnership, hereinafter referred to as the "**Declarant**."

WITNESSETH

WHEREAS, Declarant owns certain real property in Sandoval County, New Mexico, described on Exhibit "A" attached hereto; and

WHEREAS, Declarant desires to create an exclusive planned community known as Cabezon - Centex, on the land described on Exhibit "A," and such other land as may be added thereto pursuant to the terms and provisions of this Declaration;

NOW THEREFORE, Declarant declares that the Property (as hereinafter defined) will be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which will be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot (as hereinafter defined) and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants will be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and will inure to the benefit of each Owner (as hereinafter defined) thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "**Association**" shall mean and refer to Cabezon - Centex Homeowners Association, Inc., a New Mexico nonprofit corporation established for the purposes set forth herein.

Section 1.2 "**City**" shall mean and refer to the City of Rio Rancho, Sandoval County, New Mexico.

Section 1.3 "**Common Areas**" shall mean and refer to that portion of the Property, if any, including any improvements thereon, conveyed to the Association free and clear of monetary encumbrances for the common use and benefit of the Owners.

Section 1.4 "**Common Maintenance Areas**" shall mean and refer to the Common Areas, and any areas within public rights-of-way, easements (public and private), private park(s), streets, homeowner tracts, temporary desilting ponds, surge ponds, and any improvements, or landscaping that the Board of Directors of the Association deems necessary or appropriate to maintain for the common benefit of the members.

Section 1.5 "**Declarant**" shall mean and refer to Centex Homes and its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

Section 1.6 "**Declaration**" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Cabezon - Centex, and any amendments and supplements thereto made in accordance with its terms.

Section 1.7 "**Lot**" shall mean and refer to any of the plots of land indicated upon the recorded subdivision plat(s) of the Property or any part thereof creating single-family homesites, but only if the plot of land has in place an infrastructure (including utilities and streets) necessary to allow construction of a single-family home. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of the definition of a Lot.

Section 1.8 "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.9 "**Plat**" shall mean and refer to the final plats of Cabezon - Centex, Tract 7A, Phase I recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2445-B as Document 24953 and Tract 7A-1-A, Phase II recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2446-A as Document 24954, Plat Records of Sandoval County, New Mexico.

Section 1.10 "**Property**" shall mean and refer to the real property described on Exhibit "A." and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration.

Section 1.11 "**Unit**" shall mean and refer to any residential dwelling situated upon any Lot.

ARTICLE II

CABEZON - CENTEX HOMEOWNERS ASSOCIATION, INC.

Section 2.1 **Membership.** The Declarant and every Owner of a Lot by virtue of ownership of such Lot will be a member of the Association. Membership will be appurtenant to and will not be separated from ownership of any Lot. There will be two (2) classes of membership: Class A and Class B, being more particularly described in Section 2.7.

Section 2.2 **Funding.** Subject to the terms of this Article II, the Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it will be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments or charges, and (b) special assessments for capital improvements to the Common Areas, such assessments to be established and collected as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of the covenants contained herein. The regular and special assessments, together with interest, costs, and reasonable attorneys' fees, will be a charge on the land and will be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, will also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments will not pass to the successors in title of such Owner unless expressly assumed by them in writing.

Section 2.3 **Regular Assessment or Charge.**

(a) **Regular Assessment Rate.** Subject to the terms of this Article, each Lot is hereby subject to an initial regular assessment charge as provided in this Section 2.3. The regular assessment charge shall be fixed at a uniform rate for all Lots except that a Lot that does not have an Occupied Unit thereon shall be assessed at 1/4 the regular assessment rate. An "**Occupied Unit**" shall mean a finished Lot with a completed Unit thereon and in which a person(s) occupies such Unit for household purposes. The rate at which each Lot will be assessed, and whether such assessment will be payable monthly, quarterly or annually, will be determined by the Board of Directors of Cabezon - Centex Homeowners Association, Inc. (the "**Board of Directors**"), at least 30 days in advance of each assessment period. Said rate may be adjusted as provided by the Board of Directors, subject to the provisions herein and in the By-laws.

(b) **Declarant's Subsidy/Full Assessment Obligation.** While Declarant is only required to pay a reduced assessment rate for Lots that do not have an Occupied Unit thereon, Declarant hereby covenants and agrees that if the annual assessment fund revenues are insufficient to pay the operating expenses of the Association, it will provide the funds to make up the deficit; provided, however, Declarant shall only be obligated to pay an amount equal to the difference between the total amount paid by Declarant for Lots that do not have an Occupied Unit thereon and the total assessment amount Declarant would have paid for such Lots if assessed at the full rate. Declarant shall pay such deficit amount within 30 days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their regular or special maintenance assessments, the Association will diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and will reimburse the Declarant the amounts, if any, so collected. Notwithstanding the foregoing, rather than paying the deficit amount, Declarant will have the right to pay the full assessment rate for all Lots owned by Declarant (regardless if the Unit thereon is not Occupied) and upon such payment at the full assessment rate Declarant is hereby excused from the payment of any budget deficits. The payment at the full assessment rate does not relinquish Declarant's right to pay at the reduced rate for subsequent years, if applicable.

(c) **Increases in Regular Assessments.** From and after January 1st of the year immediately following the conveyance of the first Lot to a Class A member, the maximum regular assessment shall be increased each year 10% above the maximum assessment for the previous year without a vote of the membership. This increase in the maximum assessment does not mean that the Board will or has to increase the assessment to the maximum level when it sets the regular assessment. From and after January 1st of the year immediately following the conveyance of the first Lot to a Class A member the maximum regular assessment may be increased more than 10% above the prior year's maximum by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting called for this purpose. Written notice of such meeting shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as and incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) **Certificate of Assessment Status.** The Association will, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

(e) **Purposes of Assessment Fund.** The Association will establish an assessment fund composed of regular assessments and will use the proceeds of such fund in providing for normal, recurring expenses related to the Common Maintenance Areas or that are set forth in the Association's budget. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping), and the improvements to such Common Maintenance Areas, such as sprinkler systems, provided that the Association will have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; perpetual maintenance and enhancement for fences, columns, signage, walls, grounds, landscaping, lights, entry monuments, swimming pool; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the property to which the regular assessment fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the regular assessment; employment of policemen and watchmen, if any; caring for vacant Lots; and doing any other thing or things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board of Directors in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance will be final and conclusive so long as such judgment is exercised in good faith. The Association will, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas. The fund will be established and maintained out of regular assessments.

Section 2.4. Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments as follows:

(a) Upon sale of the first Lot to a Class A Member, a special assessment equal to two (2) months' estimated regular assessment may be assessed which shall be due and payable upon conveyance of the Lot to a Class A Member. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be available for all necessary expenditures of the Association.

(b) In any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Maintenance Area, including fixtures and personal property related thereto may be assessed. The Association shall not commingle the proceeds of such special assessments with the regular assessment fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

(c) The Board of Directors shall determine the necessity and the amount of any special assessment. Special assessments shall not be effective unless approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting called for the purpose of approving the special assessments and conducting other business, if any. Written notice of such meeting shall be sent to each member not less than ten (10) days nor more than fifty (50) days in advance of the meeting.

Section 2.5 **Non-payment of Assessments; Remedies of the Association.** Any assessment not paid within 10 days after the due date will bear interest from the due date at the lesser of, but not to exceed, 18% per annum or the highest rate of interest allowed by New Mexico law, as amended from time to time. The Association will have the authority to impose late charges of \$20.00 to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions, and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Area or abandonment of his property.

Section 2.6 **Subordinated Lien to Secure Payment.** To secure the payment of any assessment established hereby and to be levied on individual Lots as above provided, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure will extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale, foreclosure or transfer will relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association will have the right to file notices of liens in favor of such Association in the Official Records of Sandoval County, New Mexico.

Section 2.7 **Voting Rights.** The Association will have two classes of voting membership:

(a) **Class A.** Class A members will be all Owners, with the exception of Declarant, and will be entitled to 1 vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons will be members, but the vote for such Lot will be exercised as they among themselves determine, and in no event will more than 1 vote be cast with respect to any Lot.

(b) **Class B.** The Class B members will be the Declarant and will be entitled to 3 votes for each Lot that Declarant owns. The Class B membership will cease and be converted to Class A membership 120 days after the conveyance of the Lot which causes the total votes outstanding in the Class A membership to equal the total votes outstanding in the Class B membership, or 10 years after conveyance of the first Lot to a Class A member, whichever occurs earlier.

(c) **Suspension.** All voting rights of an Owner will be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article II or is otherwise in default hereunder or under the By-laws or rules and regulations of the Association.

ARTICLE III

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 3.1 Purpose of Regular Assessment Fund. The Board of Directors, for the benefit of the Owners, will provide and will pay for out of the regular assessment fund (provided for in Article II above) the following:

(a) Taxes and assessments and other liens and monetary encumbrances which will properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(b) Care and preservation of the Common Areas and the Common Maintenance Areas.

(c) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors (provided that any contract for management of the Association will be immediately terminable, without cause, by the Association, with no penalty, upon no more than 90 days prior written notice to the managing party), and the services of such other personnel as the Board of Directors will determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board of Directors or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance insuring the Association and/or its Board of Directors and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors, including a policy or policies of insurance as provided herein in Article IV.

(f) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(g) Such fidelity bonds as may be required by the By-laws or as the Board of Directors may determine to be advisable.

(h) Normal recurring expenses as described in paragraph 2.3(e).

(i) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion will be necessary or proper for the enforcement of this Declaration.

Section 3.2 Powers and Duties of the Board of Directors. The Board of Directors, for the benefit of the Owners, will have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the By-laws of the Association:

(a) To execute all declarations of ownership for tax assessment purposes with regard to the Common Areas, if any, on behalf of all Owners.

(b) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners if the Board of Directors sees fit.

(c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary for or incidental to the operation and management of the Association.

(d) To protect or defend the Common Areas and the Common Maintenance Area (if desired by the Board) from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(e) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Owners, or with respect to a rule applicable to less than all of the Common Areas, by the Owners in the portions affected.

(f) To make available for inspection by Owners within 60 days after the end of each fiscal year an annual report, and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

(g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all assessments and enforce all penalties for non-payment, including the filing of liens and institution of legal proceedings.

Section 3.3 **Board Powers Exclusive.** The Board of Directors will have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the regular assessment fund and the exclusive right and obligation to perform the functions of the Board of Directors, except as otherwise provided herein.

Section 3.4 **Maintenance Contracts.** The Board of Directors, on behalf of the Association, will have full power and authority to contract with any Owner or other person or entity for the performance by the Association of services which the Board of Directors is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board of Directors may deem proper, advisable and in the best interest of the Association.

ARTICLE IV

TITLE TO COMMON AREAS

Section 4.1 Association to Hold. The Association will own all Common Areas in fee simple and assume all maintenance obligations with respect to any Common Areas which may be hereafter established. Nothing contained herein will create an obligation on the part of Declarant to establish any Common Areas.

Section 4.2 Liability Insurance. From and after the date on which title to any Common Area vests in the Association, the Association will purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas or the Common Maintenance Area (if desired by the Board of Directors). The policy limits will be as determined by the Board of Directors of the Association. The Association will use its best efforts to see that such policy will contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of members, the Directors, and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association will be received, held in a segregated account and distributed to the Association's general operating account, members, Directors, the management company and other insureds, as their interests may be determined.

Section 4.3 Condemnation. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto will be payable to the Association and will be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event the Board of Directors of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or for whatever reason, any remaining funds may be distributed to each Owner on a pro rata basis.

ARTICLE V

ARCHITECTURAL REVIEW

Section 5.1 Architectural Control Committee. A committee to be known as the Architectural Control Committee (the "ACC") will be established consisting of 3 members.

(a) The members of the ACC will be appointed, terminated and/or replaced by the Declarant so long as there is Class B membership. Thereafter the members of the ACC will be appointed, terminated and/or replaced by the Board of Directors. The members appointed to the ACC are Norm Gregory, Rick Crawley and Kyle Fisher.

(b) The purpose of the ACC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed for the Lots.

(c) The ACC will act by simple majority vote, and will have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

Section 5.2 **Scope of Review.** No building, fence, wall, outbuilding, landscaping, swimming pool, athletic facility or other structure or improvement will be erected, altered, added onto or repaired upon any portion of the Property without the prior written consent of the ACC, provided however, that improvements erected, altered, added onto or repaired by Declarant will be exempt from the provisions of this Article V.

Section 5.3 **Submission of Plans.** Prior to the initiation of construction upon any Lot, the Owner (excluding Declarant) thereof will first submit to the ACC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function. In addition, the Owner will submit the identity of the individual or company intended to perform the work and projected commencement and completion dates.

Section 5.4 **Plan Review.** Upon receipt by the ACC of all of the information required by this Article V, the ACC will have 30 days in which to review said plans. The proposed improvements will be approved if, in the sole and absolute opinion of the ACC: (a) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (b) the improvements will not violate any restrictive covenant or encroach upon any easement or cross platted building set back lines; (c) the improvements will not result in the reduction in property value, use or enjoyment of any of the Property; (d) the individual or company intended to perform the work is acceptable to the ACC; and (e) the improvements will be substantially completed, including all cleanup, within 3 months of the date of commencement (6 months for the construction of a complete house). If the ACC fails to issue its written approval within 30 days of its receipt of the last of the materials or documents required to complete the Owner's submission, such failure by the ACC to issue its written approval shall be deemed disapproval.

Section 5.5 **Non-conforming Structures.** If there will be a significant or material deviation from the approved plans in the completed improvements, such improvements will be in violation of this Article V to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, will recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

Section 5.6 **Immunity of ACC Members.** No individual member of the ACC will have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. The Association will defend any action brought against the ACC or any member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

Section 5.7 **Address for Notice.** Requests for ACC approval or correspondence with the ACC will be addressed to Cabezon - Centex Architectural Control Committee and mailed or delivered in care of Centex Homes at the address shown at the end of the signature block hereto, or such other address as may be designated from time to time by the ACC. No correspondence or request for approval will be deemed to have been received until actually received by the ACC in form satisfactory to the ACC.

ARTICLE VI

EASEMENTS

Section 6.1 **Utility Easements.** As long as Class B membership will be in effect, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television, telephone, gas and electric systems. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. Upon cessation of Class B membership, the Association will have the right to grant the easements described herein.

Section 6.2 **Declarant's Easement to Correct Drainage.** As long as Class B membership will be in effect, Declarant hereby reserves for the benefit of Declarant, a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

Section 6.3 **Easement for Unintentional Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Areas caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement will exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment.

Section 6.4 **Easement for Perimeter Fence and Sidewalk.** The Declarant hereby reserves for the benefit of Declarant and the Association an exclusive easement for a perimeter masonry and/or wooden fence and sidewalk running at the rear (and in some cases, the side) of Lots along the streets or commercial tracts surrounding the neighborhood. On the Plat (a copy of which is attached hereto as Exhibit "B"), these areas are located immediately adjacent to Lots abutting Unser Blvd on the west; Cabezon Blvd on the north; Western Hills Drive and Trail Side Road on the east and Westside Blvd on the south. In addition, it includes Lots abutting the commercial site on the southwesterly corner of the Property (Unser and Westside). These Lots will be sold subject to the perimeter masonry wall and/or wooden fence and sidewalk and the fence and sidewalk easement described in this section, and the easement will be coextensive with the footprint of the fence and sidewalk. Additionally, the owners of these Lots will be responsible for the maintenance of the interior portion of the masonry wall or fence, including, but not limited to, control of the watering in the area upon which the fence is situated to prevent the shifting of the foundation of the wall or fence which could damage the wall and/or fence.

Section 6.5 **Entry Easement.** If the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association will have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein will not be deemed a trespass, and the Association will not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 6.6 Storm Drain, Sewer and Water Easements. Easements for the installation and maintenance of utilities, including, but not limited to, storm water retention/detention ponds, are reserved as may be shown on the recorded Plat. Within these easement areas, no structure, planting or other material will be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein will be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 6.7 Temporary Completion Easement. All Lots will be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement will terminate 12 months after the date such Lot is conveyed to the Owner by the Declarant.

ARTICLE VII

USE AND OCCUPANCY

All Lots and dwellings will be used and occupied primarily for single-family residence purposes only. No Lot or dwelling may be used for commercial, institutional or other non-residential purpose (including residential day care facilities) if (a) the existence or operation of the business activity is apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity does not conform to all zoning requirements for the Property; (c) the business activity involves regular visitation of the Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents in the Property; and (d) the business activity diminishes the residential character of the Property or constitutes a nuisance, or a hazardous or offensive use, or threatens the security or safety of the other residents in the Property, as may be determined in the sole discretion of the Board of Directors. This prohibition will not apply to (i) "garage sales" conducted entirely on an Owner's Lot in accordance with guidelines (if any) established by the Association provided that no Owner will conduct more than 1 garage sale of no more than 2 days duration during any 6 month period, or (ii) the use of any Unit by Declarant as a model home or sales office, or (iii) the use of any Lot as a site for a selection center trailer, construction office trailer and/or sales office trailer and/or parking lot by Declarant.

ARTICLE VIII

PROPERTY RIGHTS

Section 8.1 Owners' Easements of Enjoyment. Every Owner will have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement will be appurtenant to and will pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association members.

(b) The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association, subject to the provisions hereof, to dedicate, sell or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication, sale or transfer will be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication or transfer, excluding Declarant.

(d) The right of the Association, subject to the provisions hereof, to mortgage all or any part of the Common Areas. The Common Areas cannot be mortgaged without consent of two-thirds (2/3) of the votes of each class of membership, excluding Declarant.

(e) All easements herein described are easements appurtenant to and running with the land; they will at all times inure to the benefit of and be binding upon Declarant, its grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Section 8.2 **Effect of Declaration.** Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 8.3 **Rezoning Prohibited.** No Lot will be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant, which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

Section 8.4 **Lot Consolidation.** Declarant may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof. The Lot or Lots resulting from such division and/or consolidation shall bear, and the Owner(s) thereof shall be responsible for, all assessments theretofore applicable to the Lots which are divided and/or consolidated; provided, however, if a Lot is split and not completely consolidated into another Lot, then the assessment amount shall be prorated on a square footage basis. Each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation.

Section 8.5 **Drainage Alteration Prohibited.** The surface water drainage contours of each Lot will conform to the grading plan established by the Declarant and approved by the City of Rio Rancho. No Owner will fill or alter any drainage swale established by the Declarant, nor will any Owner install landscaping or other improvements that may damage or interfere with the installation and maintenance of utilities or which may obstruct or divert surface water runoff from the drainage patterns, swales and easements established by the Declarant.

ARTICLE IX

USE RESTRICTIONS

Section 9.1 **Nuisances.** No noxious or offensive activity will be carried on upon any Lot, nor will anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 9.2 **Development Activity.** Notwithstanding any other provision herein, Declarant and its successors and assigns, will be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of single-family dwelling units on the Property.

Section 9.3 **Temporary Structures.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure will be used on any Lot at any time as a residence, either temporarily or permanently. This restriction will not be interpreted to limit the right of Declarant to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

Section 9.4 **Signs, Flags and Flagpoles.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Property or the subdivision or carried by any person or by any other means displayed within the Property or the subdivision except the following:

(a) **For Sale Signs.** An Owner may erect 1 sign not exceeding 2 feet by 3 feet in area, fastened only to a stake in the ground and extending not more than 3 feet above the surface of the ground advertising the property for sale.

(b) **Declarant's Signs.** Signs or billboards may be erected by the Declarant.

(c) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs will not be erected more than 90 days in advance of the election to which they pertain and are removed within 15 days after the election.

(d) **School and Business Logos.** Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven in the subdivision.

(e) **Flagpoles and Yard Ornaments.** Yard ornaments, including, but not limited to, birdbaths, birdhouses, fountains, sculptures, statues, flags and banner, etc., shall not be placed in the front yard of a Residential Lot without prior approval from the ACC, which approval the ACC may give or withhold in its sole discretion. Not more than one (1) flag or banner shall be attached to the Unit on a Lot, and the length of the standard supporting such flag or banner shall not exceed four feet (4'). No more than one (1) free standing flagpole shall be allowed on a Lot and shall be subject to the following limitations: (a) the use shall be limited to flying one (1) flag of the United States of America, (b) the flag pole shall be constructed of fiberglass, aluminum or galvanized metal, (c) the pole shall be white except for the natural aluminum, (d) the flag size shall not exceed four feet (4') by six feet (6'), (e) the flag material shall be nylon or more durable material such as 2 ply polyester, (f) the flag pole shall be set in concrete twelve inches (12") in diameter and three feet (3') deep, (g) the flag and flag pole shall be maintained at all times in good condition and repair, (h) the flag and flag pole shall not be illuminated, (i) the flag pole shall in no event exceed fifteen feet (15') in height measured from the ground from where it is installed, (j) the flag pole shall not be placed in a public easement and shall be located no closer than the greater of (1) the height of the flag pole measured from the ground from where it is installed, or (2) fifteen feet (15') from the front of the Residential Lot's property line, and (k) the flag shall be raised at sunrise and lowered at sunset and

flown at half mast on "half mast" days such as Memorial Day. If a flag pole is installed on a Lot and the Owner of the Lot fails to fly the flag of the United States of America in accordance with the foregoing terms for a period of (a) thirty (30) or more consecutive days or (b) sixty (60) days in any calendar year, the Owner shall cause the flag pole to be removed and the landscaping where the flag pole was located restored.

Notwithstanding the above, Declarant shall have the right to erect and illuminate as many flagpole at whatever size it deems appropriate at its model home/sales complexes, as long as the model home/sales offices are being used.

Declarant or its agents will have the right to remove any sign, billboard banner sign, flag pole yard ornament, or advertising structure that does not comply with the foregoing requirements; and in so doing, will not be subject to any liability in connection with such removal.

Section 9.5 Vehicles.

(a) **Campers, Boats and Recreational Vehicles.** No campers, boats, marine craft, hovercraft, boat trailers, travel trailers, motor homes, camper bodies, golf carts, and other types of recreational vehicles and non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within a garage located on such Lot and/or said vehicles and/or accessories are screened from view from the front of the Lot by a screening structure or fencing not less than five (5) feet in height, approved by the ACC, and said vehicles and accessories are in operable condition. The ACC, as designated in this Declaration, will have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and fully enclosed and/or screened. Upon an adverse determination by said ACC, the vehicle and/or accessory will be removed and/or otherwise brought into compliance with this paragraph. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or yard adjacent to a street.

(b) **Commercial Vehicles.** No commercial vehicle with a gross vehicle weight ratio greater than one (1) ton will be parked on any street right-of-way or Lot except within an enclosed structure which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity. No trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time. No vehicles or similar equipment may be parked on the landscaped areas of any Lot or Common Area, except as provided by Section 9.5 (a).

(c) **Motor Vehicles.** No vehicles or similar equipment will be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks, and pick-up trucks with attached bed campers that are in operating condition and have current license plates and are in daily use as motor vehicles on the streets and highways of the State of New Mexico. Vehicles may only be parked on driveway or vehicular parking surfaces. Driveway and vehicular parking paved surfaces shall not comprise more than forty percent (40%) of the Lot area located in the front yard area of a Unit. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot.

Section 9.6 Pets, Livestock and Poultry. No animals, livestock or poultry of any kind will be raised, bred or kept on any Lot, except for cats, dogs or other generally recognized household pets, provided that they are not kept, bred, or maintained for any commercial purpose or for food. It is the purpose of these

provisions to restrict the use of the Property so that no person will quarter on the premises cows, horses, bees, hogs, pigs, sheep, goats, ducks, geese, chickens, turkeys, skunks or other animals that may interfere with the quietude, health or safety of the community. No more than four (4) animals may be kept on a single Lot. All such animals will be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. All animals must be properly tagged for identification. No animal will be allowed to run at large, and all animals will be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times.

Section 9.7 **Garbage and Refuse Disposal.** No Lot will be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste will not be kept except in sanitary containers. All equipment for the storage or disposal of such material will be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris will be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but will be removed from view before the following day. Materials incident to construction of improvements may be stored on Lots during construction by Declarant.

Section 9.8 **Air-Conditioning Units.** No air-conditioning apparatus will be installed on the ground in front of a residence nor will any air-conditioning apparatus or evaporative cooler be attached to any front wall or any window of a residence.

Section 9.9 **Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them, at points twenty-five (25) feet from the intersection of the street property lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations will apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree will be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 9.10 **Parking.** No vehicles, trailers, implements or apparatus may be driven or parked in the Common Areas, the Common Maintenance Areas or on any easement unless such vehicle, trailer, implement or apparatus is in use for maintaining such area or easement, provided, however, that this restriction will not apply to driveways or streets intended for vehicular use.

Section 9.11 **Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot, will be used for manufacturing, industrial, business, professional, commercial, institutional or other non-residential purposes, except as set forth in Article VII.

Section 9.12 **Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages (other than provided herein) and storage buildings, will be erected, placed or constructed upon any Lot without the prior consent of the ACC. Every outbuilding, inclusive of such structures as a storage building, or greenhouse will be compatible with the dwelling to which it is appurtenant in terms of its design and material composition, and must meet setback requirements as stated in the City of Rio Rancho Zoning Code. Exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the dwelling.

Section 9.13 Fences. All fences and walls will comply with City requirements. No fence, wall or hedge will be erected or maintained on any Lot nearer to the street than the building setback lines for the front and side yards, except for fences erected in conjunction with model homes or sales offices. Fences constructed on corner lots may be erected for the side yard as long as such fencing complies with City requirements. All perimeter fences will be constructed of wood, masonry, and/or masonry/metal combination except for retaining walls installed by Declarant or retaining walls or decorative walls approved by the ACC. All side and rear property lines must be fenced and meet City set-back criteria. All perimeter fences will be five (5) feet in height unless another height is approved by the ACC but, in any event, no such fence will be less than four (4) feet in height or greater than eight (8) feet in height. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot unless such fence is located within the perimeter fence in such a manner that it is not visible from any street, alley, park, Common Area or public area (unless otherwise approved by the ACC in the manner described below). Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent Lots will be owned and maintained by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained by the Owners whose Lots are involved jointly with expenses being shared equally. Any owner may raise common walls to a maximum height of six feet without consent of adjacent owner. Notwithstanding the foregoing, the ACC will have the right and authority to approve variances of fencing height, material and/or location for reasonable cause or to alleviate hardship as determined in the sole judgment of the ACC; provided however, the ACC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the City unless the City has previously approved the variance. No Owner may modify, adjust, or alter the perimeter wall on McMahan Boulevard, Tuscany Drive or any retaining wall installed by the Declarant.

Section 9.14 Sidewalks. All sidewalks will conform to City specifications and regulations. If a homeowner, its representative, agent or employee, causes damage to any sidewalk located on or adjacent to such homeowner's Lot, the homeowner must repair or replace the sidewalk so that it will be returned to its original condition.

Section 9.15 Landscaping and Exterior Maintenance. All landscaping located on any Lot will be properly maintained at all times by the Lot Owner. Front yard landscaping requires a minimum of two trees; one must be a large canopy street tree, minimum 1.5" caliper, and one may be an eight foot tall conifer. Each Lot Owner will keep all shrubs, trees, grass, and plantings of every kind on his Lot cultivated, pruned, free of trash, and other unsightly material. All improvements upon any Lot will at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner. Declarant, the Association, and the ACC will have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, and to charge the cost thereof to the Lot Owner.

Section 9.16 Antennae, Satellite Dishes and Solar Collectors. Except with the written permission of the ACC or as provided herein, no Owner may erect or maintain (a) any direct broadcast satellite ("DBS") antenna greater than one meter (39 inches) in diameter, or (b) any multi-channel multipoint distribution service (wireless cable) ("MMDS") antenna greater than one meter (39 inches) in diameter; (c) no dish antenna greater than 18" may be roof mounted, and must be mounted above the electric meter, provided, however, such DBS or MMDS antenna being less than one meter in diameter may be placed in the least conspicuous location on a Lot where an acceptable quality signal can be received as long as such DBS or MMDS antenna is screened from view (for aesthetic reasons) of any street, alley, park, Common Area or other public area, unless otherwise approved in writing by the ACC. The installation of any other antennal structure, such as a television broadcast service ("TVBS") antenna, will be mounted in the attic of a residential structure unless written permission is given by the ACC to place such antennal structure in another location. Except

with the written permission of the ACC, no solar collector panels may be placed on or around the residential structure.

Section 9.17. Clothes Hanging Devices. No clothes hanging devices exterior to a dwelling are to be constructed on the Lot except those of a temporary nature that are screened from view from the front of the Lot.

Section 9.18 Window Treatment. No aluminum foil, reflective film or similar treatment will be placed on windows or glass doors. Temporary window treatments must be removed within forty-five (45) days.

Section 9.19 Limitation on Square Feet. The minimum square footage area of Units erected on the Lots will not be less than 1250 square feet.

Section 9.20 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind will be permitted upon or in any Lot, nor will oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas will be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

Section 9.21 Mail Boxes. Mail boxes will be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards.

Section 9.22 Garages and Driveways. An enclosed garage able to accommodate up to 2 automobiles must be constructed and maintained for each residence. Additionally, all openings to garages must be situated within the setback lines set out in Section 9.23 below. Garages may be used as a builder's sales offices prior to permanent occupancy of the main structure; however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, all garages will be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation. No carport will be permitted on a Lot.

Section 9.23 Setback Lines. No dwelling will be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum setback lines shown on the Plat or required by the City. Notwithstanding the foregoing, the ACC will have the right and authority to approve variances from the setback requirements for reasonable cause or to alleviate a hardship; provided however, the ACC may not approve a variance which contradicts the setback requirements of the zoning and/or subdivision ordinances of the City unless the City has previously approved the variance.

Section 9.24 Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as playscapes, swing sets and sport courts of a permanent nature will not be placed on any Lot within the Property or the subdivision between the street right-of-way and the front of a Unit unless approved by the ACC pursuant to Article V. Notwithstanding the foregoing, basketball goals may be placed adjacent to the driveway but within the Lot.

Section 9.25 Security. The Association is not responsible for security of the neighborhood or any Unit and the Owners are exclusively responsible for security for home and property.

Section 9.26 Burning. Except within fireplaces in the main residential dwelling and except for outdoor cooking, no burning of anything will be permitted anywhere on the Property.

Section 9.27 Utilities. Except as to special street lighting or other aerial facilities which may be required by the City or by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) will be erected or installed on the Property whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Property, and all utility service facilities (including, but not limited to, water, sewer, gas, cable, electricity and telephone) will be buried underground unless otherwise required by a public utility. No individual water supply system or sewage disposal system will be permitted on any Lot, including, but not limited to, water wells, cesspools or septic tanks.

Section 9.28 Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. All lights and decorations must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 1st of any year. For other holidays, decorations or lights may not be displayed more than three (3) weeks in advance of the holiday. The Association will have the right, upon thirty (30) days prior written notice, to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, will not be liable to the Owner for trespass, conversion or damages of any kind except in the case of intentional misdeeds and gross negligence.

Section 9.29 Construction Activities. This Declaration will not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities will 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 diligence and conforms to usual construction practices in the area. If construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole good faith judgment, the ACC will have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot, there is an excessive accumulation of debris of any kind that is offensive or detrimental to the Property or any portion thereof, then the ACC may contract for or cause such debris to be removed, and the Lot Owner will be liable for all expenses incurred in connection therewith.

ARTICLE X

PICKETING AND DEMONSTRATIONS

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the Property that no Owner or resident of any Lot will engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any Common Area, easement or street right-of way adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot. This prohibition will not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on the recorded subdivision Plat. No Owner or resident of any Lot

will engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Area easement or street depicted on the subdivision Plat. Each Owner, by acceptance of the deed to any Lot, will be deemed to have accepted the foregoing prohibitions as reasonable limitations on his constitutional right of free speech, and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; and the right to engage in a profession, business or life-style of their own choosing provided that the conduct of such profession, business or life-style is not illegal and does not otherwise violate any provision of this Declaration.

ARTICLE XI

ANNEXATION

Section 11.1 Annexation by Declarant. At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant, provided that the annexation will be governed by the following rules:

(a) **Eligible Property.** All or any portion of the properties described in Exhibit "C" attached hereto and incorporated herein by this reference. All of the Eligible Property is hereby subject to the covenants, conditions and restrictions contained in this Declaration.

(b) **Consent or Joinder Not Required.** No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.

(c) **Declaration of Annexation.** Annexation shall be evidenced by a written Declaration of Annexation executed by Declarant setting forth the legal description of the property being annexed and the restrictive covenants to be applied to such annexed property.

Section 11.2 Annexation by Action of Members. At any time the Board of Directors may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved in writing by members entitled to cast two-thirds (2/3) of the votes in each class of membership, and by FHA and VA as set forth in subsection 11.1(a) above. Any property that is not owned by Declarant may be annexed hereto according to the foregoing requirements; provided, however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation, as set forth in subsection 11.1(c) above, executed by the parties herein described.

Section 11.3 No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association, and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

Section 11.4 Effect of Annexation on Class B Membership. In determining the number of lots owned by Declarant for purposes of Class B membership status according to Section 2.7, the total number of Lots covered by the Association, including all Lots annexed thereto, will be considered. If Class B membership has previously lapsed but annexation of additional property restores the ratio of Lots owned by Declarant to the

number required for Class B membership, such Class B membership will be reinstated until it expires pursuant to the terms of Section 2.7.

ARTICLE XII

GENERAL

Section 12.1 Enforcement. The Association or any Owner will have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges imposed now or in the future by the provisions of this Declaration. Failure of the Association or any Owner to enforce any covenant or restriction of this Declaration will in no event be deemed a waiver of the right to do so in the future.

Section 12.2 Remedies. In the event of any default by any Owner under the provisions of this Declaration, the By-laws or the rules and regulations of the Association, the Association and any Owner will have each and all of the rights and remedies which may be provided for in this Declaration, the By-laws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity will be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, will be charged to and assessed against such defaulting Owner, and will be added to and deemed part of his respective regular assessment (to the same extent as the lien provided herein for unpaid assessments) upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

Section 12.3 Term and Amendments. The covenants and restrictions of this Declaration will run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they will be automatically extended for successive periods of ten (10) years each, unless 75% of the votes outstanding will have voted to terminate the covenants and restrictions of this Declaration upon the expiration of the initial 30-year period or any extension thereof, which termination will be by written instrument signed by 75% of the Owners and properly recorded in Sandoval County, New Mexico. This Declaration may be amended during the first 30-year period by an instrument signed by not less than 90% of the Owners and by the Declarant, except as provided below. Any amendment must be recorded. Notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of any other party, modify, amend or repeal this Declaration at any time prior to the closing of the sale of the first Lot covered hereunder, provided said amendment, modification or repeal is in writing and properly recorded in Sandoval County, New Mexico. Declarant further reserves, (a) prior to the closing of the sales of all of the Property, all rights which may be necessary to deal with the Property, including the right to vacate, amend or modify the Plat of the Property, and (b) the right at any time to amend this

Declaration in order to correct scrivener's errors. Amendments will be subject to prior approval by FHA and VA if any Lot covered hereunder is encumbered by an FHA or VA mortgage loan.

Section 12.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order will in no way affect any other provisions which will remain, in full force and effect.

Section 12.5 Rights and Obligations. The provisions of this Declaration and the Articles of Incorporation and By-laws and the rights and obligations established thereby will be deemed to be covenants running with the land and will inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed will be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and By-laws, whether or not mention thereof is made in said deed.

Section 12.6 FHA/VA Approval. If there exists a Class B membership, the following actions will require approval of the Federal Housing Administration and the Veterans Administration, as applicable: (1) mortgaging or conveyance of Common Areas, (2) annexation of additional properties into the Association, (3) amendment of this Declaration or the Articles of Incorporation or By-laws of the Association except 12(3)(b), and (4) dissolution of the Association.

Section 12.7 Gender. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, will include all other genders, and the singular will include the plural, and vice versa.

Section 12.8 Headings. The headings contained in this Declaration are for reference purposes only and will not in any way affect the meaning or interpretation of this Declaration.

Section 12.9 Conflicts. In the event of conflict between the terms of this Declaration and any By-laws, rules, regulations or Articles of Incorporation of the Association, this Declaration will control.

Section 12.10 Partial Invalidity. The invalidation of any one of these covenants by judgment or court order will in no way affect any of the other provisions, which will remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of the day and year first above written.

DECLARANT:

CENTEX HOMES,
a Nevada general partnership

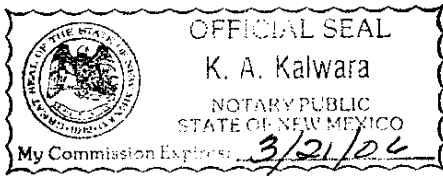
By: Centex Real Estate Corporation,
a Nevada corporation
Its: Managing General Partner

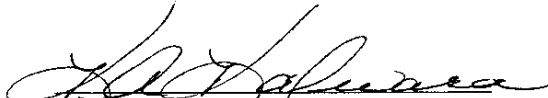
By: 

Richard T. Bressan
Land Acquisition Manger

STATE OF NEW MEXICO §
COUNTY OF Bernalillo §

The foregoing instrument was acknowledged before me on this the 2nd day of September, 2004, by Richard T. Bressan, Land Acquisition Manager of Centex Real Estate Corporation, a Nevada corporation, managing general partner of **CENTEX HOMES**, a Nevada general partnership, on behalf of said corporation and partnership.




Notary Public, State of New Mexico
Notary's Name Printed: K A KALARA
My Commission Expires: 3/21/06

AFTER RECORDING RETURN TO:
Cabezon - Centex Homeowners Association, Inc.
c/o Centex Homes
5120 Masthead NE
Albuquerque, New Mexico 87109.
Attn: Richard T. Bressan

EXHIBIT "A"

The Property

All of the Lots in Cabezon - Centex, a subdivision in Sandoval County according to Tract 7A, Phase I recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2445-B as Document 24953 and Tract 7A-I-A, Phase II recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2446-A as Document 24954, Plat Records of Sandoval County, New Mexico.

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EXHIBIT "B"

Plat

EXHIBIT "C"

Eligible Property

Eligible Property shall be those Lots within Tract 7B-1 of the Cabezon Subdivision bulk land plat recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2445-A as Document 24950.

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