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**TOSCANA AT CABEZON SUBDIVISION**

**COMPREHENSIVE DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

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THIS DECLARATION is made on the date and year below written by **D. R. HORTON, INC.**, a Delaware corporation, and **CENTEX HOMES**, a Nevada general partnership, hereinafter together referred to as the "**Declarant**", or each separately as a "**Declarant**" as the context requires.

**RECITALS**

1. Each Declarant is the owner of a portion of that certain real property identified and described as its property in Section 1.18 hereof (together the "**Property**") which is being, or has been, developed as a single subdivision.

2. The purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale and use of the Property; to preserve so far as possible the natural beauty of the Property; to guard against the erection of poorly designed or proportioned Improvements (as hereinafter defined), or the use of unsuitable materials; to encourage and secure the erection of well designed, attractive Improvements which are harmonious with their sites and consistent with existing Improvements; and in general, to enhance the environmental quality and economic value of the Property.

**NOW, THEREFORE**, each Declarant hereby declares that its real property, described in the attached **Exhibit A** (D. R. Horton, Inc.) and **Exhibit B** (Centex Homes) to this Declaration, shall be held, sold, used, developed, occupied, leased and conveyed subject to the following reservations, easements, restrictions, covenants and conditions, as amended or as modified from time to time, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I: DEFINITIONS**

**Section 1.1 "Architectural Control Committee"** shall mean and refer to the committee created pursuant to Article VIII hereof. Such Architectural Control Committee shall hereinafter sometimes be referred to as "ACC."

**Section 1.2 "Architectural Control Committee Rules"** shall mean and refer to such rules as are adopted by the ACC pursuant to Article VIII hereof.

**Section 1.3 "Assessments"** shall mean and refer collectively to all regular operating expense charges or assessments, all regular reserve fund charges or assessments, any applicable special assessments or charges, and any fines or other fees provided for in Article X hereof.

**Section 1.4 "Association"** shall mean and refer to Toscana Homeowners Association, Inc., a New Mexico non-profit corporation, which Declarant has or shall cause to be incorporated.

**Section 1.5 "Common Facilities"** shall mean and refer to all existing and subsequently provided Improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of Improvements for the

use and benefit of all Owners constructed on a portion of one or more Lots or on acreage owned by a Declarant (or a Declarant and others), which is not a part of the Common Properties. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following: structures for recreation, storage or protection of equipment, fences, walls, perimeter walls, landscaping, street lights, utility equipment, drainage, and other similar and appurtenant Improvements. References herein to the "**Common Facilities (any Common Facility) in the Subdivision**" shall mean and refer to Common Facilities as defined in this Declaration.

**Section 1.6 "Common Properties"** shall mean and refer to the tracts and any lots deeded or to be deeded to the Association for the benefit of all Owners, together with such other property as the Association may, at any time or from time to time, acquire by deed from a Declarant, purchase or otherwise acquire, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats. References herein to the "**Common Properties in the Subdivision**" shall mean and refer to Common Properties as defined in this Declaration.

**Section 1.7 "Corner Lot"** shall mean a lot which abuts more than one street, and in the absence of any other designation shall be deemed to front the street on which it has the smaller dimensions; although each Declarant reserves the right to designate the street on which any Corner Lot it owns shall be deemed to front.

**Section 1.8 "Declarant"** shall mean and refer to **D. R. HORTON, INC.** and/or **CENTEX HOMES**, as the case may be, in connection with the portion of the Property owned by each of them, or their assignee(s) of the rights and/or obligations under this Declaration.

**Section 1.9 "Declaration"** shall mean the covenants, conditions, and restrictions herein set forth in this entire document, as the same may be from time to time amended and supplemented.

**Section 1.10 "Development Plan"** shall mean the plan for development of a Lot, which is required to be submitted to the ACC pursuant to Sections 6.1 and 8.12 hereof. The plan shall include a landscaping plan.

**Section 1.11 "Drainage Easement"** shall be any area designated on the Subdivision Plat as such.

**Section 1.12 "Improvement(s)"** shall mean the buildings, garages, antennas, driveways, parking areas, walls, fences, hedges, plantings, planting or removal of trees or shrubs or hedges or ground cover or any other landscaping, lighting and all other Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across or from the land.

**Section 1.13 "Lot"** shall mean each parcel of land shown or to be shown as a lot on the recorded Subdivision Plat for the Toscana at Cabezon Subdivision, and designated thereon by a separate lot number, or shown or to be shown on any subsequent subdivision of a lot or tract within said Subdivision.

**Section 1.14 "Member(s)"** shall mean and refer to all those Owners who are members of the Association as provided in this Declaration.



**Section 1.15 "Modular Dwelling"** shall mean a factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure on a permanent foundation. The term applies to major assemblies designed to be permanently affixed to real property in conformance with the local building code, and does not include prefabricated sub-elements such as panels, trusses, or plumbing trees which are to be incorporated into a structure at a building site.

**Section 1.16 "Owner(s)"** shall mean and refer to the record owner, whether one or more persons, associations or entities, of legal, equitable or beneficial title to any Lot, including Declarant. Owner shall include the purchaser of a Lot under a seller financed real estate contract ("REC") pursuant to which the purchaser thereunder has an equitable interest in a Lot but will not obtain legal title thereto until the contract is paid in full. The foregoing does not include persons or entities who hold an interest in any Lot or in the Property merely as security for the performance of an obligation or who are the seller under a REC.

**Section 1.17 "Property"** shall mean and refer to the real property located in Sandoval County, New Mexico, specifically described in Exhibit A and B to this Declaration, including the aerial and subsurface rights appurtenant thereto. The term "Property" shall also include additional real property, if any, as may be annexed and added to the Subdivision, when a map or plat thereof is filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein and any new or revised Common Properties.

**Section 1.18 "Single-Family Residential Use"** shall mean the occupation or use of a Structure as a residence by a single person, a family or a family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county or municipal laws, rules, regulations, codes or ordinances. An Owner may rent or lease his residential Structure, but any such rental or lease must be by a written agreement which requires the tenant to observe the covenants, conditions and restrictions of this Declaration and no residential Structure may be rented or leased for a period of less than six (6) months.

**Section 1.19 "Single-Family Residential Unit"** shall mean any building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

**Section 1.20 "Structure(s)"** shall mean anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground but not including vegetation, trees, shrubs or plantings.

**Section 1.21 The "Subdivision" or "Toscana at Cabezon"** shall mean all of the "Toscana at Cabezon Subdivision", as set forth on the Subdivision Plats filed in the real property records of the Sandoval County Clerk as set forth on **Exhibits A and B** hereto, and such additional real property, if any, as may be annexed and added to the Subdivision, when maps or plats thereof are filed of record and a supplement to this Declaration is recorded which identifies the platted lots therein and the new or revised Common Properties.

**Section 1.22 "Subdivision Map" or "Subdivision Plat" or "Plat Map" or "Plat" or "Final Plat"** shall mean the recorded maps or plats of the Toscana at Cabezon Subdivision, as amended or replatted from time to time, covering any or all of the Property.

**Section 1.23 "Visible From the Street"** shall mean that with respect to any given object, such object is or would be visible to a person six (6) feet tall, standing on any part of the street in front of the subject property.

## ARTICLE II: PROPERTY SUBJECT TO RESTRICTION

**Section 2.1 General Declaration.** Each Declarant hereby declares that its portion of the Property within the Subdivision is and shall be held, conveyed, developed, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the Subdivision, improvement and sale of the Property, and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property and every part thereof. All of this Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of each Declarant, all Owners and their successors in interest.

**Section 2.2 Description of Property.** The property subject to this Declaration is all Property described in Section 1.18 hereof.

## ARTICLE III: LAND USE

**Section 3.1 Single-Family Residential Use.** The Owner shall not use any of the Property for other than Single-Family Residential Use and is restricted to one Single-Family Residential Unit per Lot.

**Section 3.2 Limitations on Renting.** No Owner shall rent its Single-Family Residential Unit for less than a six-month term. No Single-Family Residential Unit within the Subdivision shall be rented other than on a written form of lease requiring the tenant to comply with this Declaration, as amended from time to time, the Bylaws and any rules and regulations promulgated by the Association's Board of Directors (hereinafter defined) and/or the ACC, and providing that failure to comply constitutes a default under the lease. Each Owner shall promptly, following the execution of any such lease, forward a conformed copy to the Association's Board of Directors. The foregoing provisions of this subparagraph shall not apply to the Declarant, or to a mortgagee in possession of a Lot as a result of a foreclosure or other judicial sale or as a result of any proceeding in lieu of foreclosure, during the period of such mortgagee's possession.

**Section 3.3 Replatting.** Each Declarant has the right in its sole discretion to replat its portion of the Property and the Subdivision into a greater number of lots or to revise its lot lines, subject to Section 3.5 herein, and to file maps or plats of additional real property annexing and adding to the Subdivision. Each Owner hereby makes, constitutes and appoints the Declarant he has purchased his Lot from, with full power of substitution, as the Owner's lawful attorney-in-fact, with power to execute, acknowledge, file and record with any governmental authority any appropriate documents for the purpose of effecting the resubdivision of any Lot or portion thereof (including replatting the Subdivision into a greater number of Lots or revising Lot lines), in accordance with the terms of this Declaration. The foregoing power (i) is coupled with an interest, (ii) is irrevocable, (iii) shall survive the dissolution of or resignation of Declarant, (iv) may be exercised for each Owner individually or by listing all of the Owners and executing any instrument with a single signature as attorney-in-fact for all of them, and (v) shall be binding upon all assignees and successors of each Owner.

**Section 3.4 Limitations on Replatting.** No Owner (other than a Declarant) shall subdivide or separate into smaller Lots or parcels any Lot or tract. No Owner (other than a Declarant) shall convey or transfer any portion of any Lot or tract, or any easement or any other interest (other than a security interest or a rental or lease), without the written consent of the Declarant from whom the Lot or tract was purchased.

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**Section 3.5 Combining of Lots.** An Owner of two (2) or more contiguous Lots may, with prior written approval of the ACC, combine said Lots into one Lot. Such combination shall be at the sole expense of said Owner. After combination, the resulting Lot shall be treated as one (1) Lot for all purposes of this Declaration, including voting rights within the Association and resubdivision.

**Section 3.6 Restrictions On Business and Commercial Activity and Rental or Leasing of Property.** No business or commercial activity frequented by and open to the general public (and in any event no business or commercial activity which takes place outdoors or which creates noise audible from neighboring property) shall be conducted within the Subdivision. Home occupations of the Owner are permissible if conducted in the home and in compliance with city ordinances and regulations and any rules and regulations governing home occupations hereafter adopted by the ACC. Nothing contained herein shall be deemed to prevent the rental or leasing of a Single-Family Residential Unit by the Owner thereof, subject to all the provisions of this Declaration.

**Section 3.7 Conveyance of Common Properties.** Notwithstanding the foregoing limitations on land use, each Declarant has the right in its sole discretion to convey lots and tracts within the Subdivision owned by it to the Association for use as private parks and landscape easements, drainage and public utility easements and other common purposes, after final plats are recorded. This includes Tracts A, B, C, D and E in the Subdivision, which have been designated on the Subdivision plat as being for drainage and public utility purposes. Said Tracts A through E have been, or will be, conveyed to the Association by the applicable Declarant after they have been landscaped. Once said Tracts have been conveyed to the Association the Association shall be responsible for maintenance thereof. Such conveyances shall be free and clear of all encumbrances which would at any time or from time to time, secure an obligation to pay money and, with regard to any Common Properties used for ingress or egress, any conveyance or encumbrance thereof shall be subject to the Lot Owners' easement thereover. Such conveyances may, however, be subject to any/or all of the following exceptions, liens, and encumbrances:

- (a) The lien of real property taxes and assessments not delinquent;
- (b) Such easements and rights-of-way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;
- (c) Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such Property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

#### ARTICLE IV: EASEMENTS

**Section 4.1 Existing Easements.** The Subdivision Plat(s) has or shall dedicate for use as such, subject to the limitations set forth therein, certain roadways, streets, rights-of-way and easements shown thereon and such Subdivision Plat(s) has or will establish dedications, limitations, reservations and restrictions applicable to the Property. Further, each Declarant may, prior to the Property becoming subject to this Declaration, grant, create and dedicate by recorded instrument(s) certain other easements, restrictions, rights-of-way and related rights affecting its portion of the Property. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat

and all grants and dedications of easements, restrictions, rights-of-way and related rights made by a Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of a Declarant conveying any part of the Property.

**Section 4.2 Changes and Additions.** Each Declarant reserves the right to make changes in and additions to the above easements and rights-of-way affecting its portion of the Property for the purpose of most efficiently and economically installing the Improvements. Further, each Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which such easement shall have a maximum width of five (5) feet on each side of such Lot line.

**Section 4.3 Utility Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone and other communication services, electricity, cable television and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies, and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Structure. Notwithstanding anything contained in this Section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by the Declarant who owns or owned the applicable portion of the Property, or the ACC. The utility companies furnishing service shall have the right as necessary to remove trees situated within the utility easements shown on the Subdivision Plats and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

**Section 4.4 Maintenance of Perimeter Wall.** Each Owner of a Lot bordering the Subdivision perimeter wall covenants and agrees to the creation hereby of a permanent easement in favor of the Declarant from whom the Lot was purchased, the ACC and the Association to enter upon his Lot for the purpose of maintaining and repairing the perimeter wall. Each such Owner further covenants not to add to, remove, color or otherwise modify the perimeter wall. Repair and maintenance of the perimeter wall shall be the responsibility of the Association, except to the extent any repair is needed due to any negligence of such Owner, or its tenant or guest, or due to any action by such Owner in violation hereof, in which event charges for the repairs and related expenses will be assessed to that Owner.

**Section 4.5 Easements for Access by Declarant/or ACC.** The ACC and the Association shall have the right, and a permanent easement, to enter upon any and all Lots in the Subdivision for the purposes of inspections for compliance with this Declaration and correcting any violation of any obligation herein, and each Declarant shall have the same right with respect to the portion of the Property it owns or previously owned.

**Section 4.6 Surface Areas.** The surface of easement areas for any underground utility services may be used for shrubbery, trees, lawns or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them or their respective agents, employees,

servants or assigns to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

**Section 4.7 Encroachment Easements.** Should minor variations between Lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of Structures, a valid easement shall exist for the encroaching Improvement(s) for so long as the encroachment exists.

## ARTICLE V: STREETS

**Section 5.1 Public Streets.** All of the streets shown on the Plat are public streets dedicated to the City of Rio Rancho, State of New Mexico.

## ARTICLE VI: IMPROVEMENTS AND STRUCTURES

**Section 6.1 Development Plan.** Each Owner shall be required to submit a detailed Development Plan, pursuant to the Rules of the ACC, and such plan must be approved in writing prior to the commencement of construction of any Improvement. No construction whatsoever, including, without limitation, site preparation, clearing of trees or excavation, shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan. Any person purchasing any portion of the Property subject to this Declaration acknowledges that the breach or violation of this Section 6.1 is likely to result in irreparable harm to the rights and interests of other Owners in the Subdivision and that the ACC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder, including fines, or at law or equity.

**Section 6.2 Time for Construction.** All of the provisions of this Section 6.2 shall not be applicable to either Declarant, their affiliates or subsidiaries.

(a) Construction of any Structure or Improvement shall be continuous and proceed in an orderly fashion without interruptions and any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction (fourteen (14) months for landscaping).

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

(c) Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, clearing of trees, excavation or site preparation for the purpose of foundation.

(d) Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots, Common Properties or streets.

**Section 6.3 Residential Structures.** All residential Structures shall be subject to the following requirements, and each enumerated item must be included in the Development Plan submitted and approved in writing by the ACC prior to the commencement of construction; provided, however, that the following requirements shall not be the sole basis for consideration by

the ACC (see Section 8.15 of this Declaration). Once approved, no Structure or Improvement may vary from the Development Plan without further approval of the ACC.

(a) **Set Backs.** No garage shall be erected on any Lot closer than twenty-five (25) feet from the front property line. No residential Structure shall be erected on any Lot closer than twenty (20) feet from the front property line, or closer than fifteen (15) feet from the rear property line, or closer than five (5) feet from the side property line. Ordinary projections of sills, belt courses, cornices and ornamental features may project as much as twenty-four (24) inches into the side set back lines. For the purpose of this paragraph, eaves, steps, and equipment pads shall not be considered as part of a Structure. Where more than one Lot is acquired as a single building site, the side property lines shall refer only to the property lines bordering the adjoining property owners.

Notwithstanding anything to the contrary herein, the ACC shall have the right to permit reasonable modifications of the set back requirements where in the discretion of the ACC, strict enforcement of the set back provisions would work an extreme hardship or otherwise not be appropriate under the circumstances. However, in no event shall set back requirements be less than required by applicable city zoning, unless a variance has been obtained therefore by the applicable Declarant.

(b) **Minimum Floor Areas.** All Single-Family Residential Units shall have a fully enclosed heated living area of not less than eleven hundred (1100) square feet, exclusive of portals, porches (open and closed), patios, garages, balconies or decks. Carports are not permitted.

(c) **Height Limitations.** No Structure shall be erected, altered or permitted to remain on any Lot that will exceed a vertical distance above ground level of thirty (30) feet at any point (excluding roof mounted mechanical equipment or any associated screening, chimneys, flues, and vent pipes or stacks). Ground level shall be defined as the highest pad elevation on any single Lot, as shown on the grading plans and/or as directed or approved by the ACC.

(d) **Exterior Color Schemes and Materials.** Single-Family Residential Units shall be constructed with exterior wall surfaces that are predominantly stucco. Masonry veneer or solid masonry (including stone) accents are permitted provided that such accents do not comprise greater than 25% of the surface area of any elevation of the Structure (front, sides, back). Exterior surface colors shall be in earth tones approved by the ACC with no bright or gaudy colors being allowed.

(e) **Roofing Materials.** Roofs shall be made of architectural composite shingles or concrete or clay tile, in either barrel or flat style, and shall be in harmonious color tones approved by the ACC. The ACC shall have the right to impose additional limitations on roofing materials or to allow flat roofs to be used in any Structure.

(f) **Driveways.** The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or other private driveways in the Subdivision.

(g) **Garbage Containers.** Each Owner will be responsible for placing solid waste in plastic bags and/or garbage cans, as may be required by the trash removal service.

(h) **Tanks, Air Conditioners and Evaporative Coolers.** The ACC shall have the right to approve the location of any tank, air conditioner or evaporative cooler used or proposed in connection with a Single-Family Residential Unit, including swimming pool filter tanks. Oil or gasoline tanks are prohibited on any Lot. No heating or air conditioning equipment shall be mounted on any roof or exterior wall.

(i) **Exterior Lighting.** The ACC shall have the right to approve the location, number, size and design of all proposed exterior lighting.

(j) **Garages.** No garage shall be erected, altered, placed or permitted to remain on any Lot other than a private garage for not more than three (3) cars, or less than two (2) cars. The interior of any garage may be converted to any use which is otherwise permissible hereunder, however, the exterior facade of any converted garage, including but not limited to exterior doors, shall not be modified in any way. No interior of any garage may be converted for use as living or office space or to conduct any business or commercial venture if such conversion would result in less than 2 parking spaces in the garage.

**Section 6.4 Trees, Shrubs and Landscaping.** Landscaping is a mandatory element of each Development Plan. The ACC shall have the right to approve the removal and/or addition of trees, shrubs, hedges, ground cover and all other landscaping.

**Section 6.5 Windmills, Towers and Antennas.** No windmills or towers will be allowed in the Subdivision. No antenna or satellite dishes or other service for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on any Lot, whether attached to a building or Structure or Single-Family Residential Unit, without the prior approval of the ACC. Notwithstanding the foregoing, the ACC shall approve a location that is Visible From the Street, if such location is the only location where an adequate signal can be received. No radio signals, television signals, or any other form of electromagnetic radiation shall originate from any Lot which may unreasonably interfere with the reception of any television or radio signal on any other Lot.

**Section 6.6 Underground Utility Lines.** No utility lines, including, but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any Property, by any Owner other than Declarant, within the Subdivision unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Structures.

**Section 6.7 Temporary Structures.** No temporary structures or temporary buildings of any kind, including but not limited to a trailer, mobile home, basement of any incomplete building, tent, shack, garage, barn shall be utilized at any time for a residence on the Property within the Subdivision either on a temporary or permanent basis. Temporary structures may only be used for other purposes if the Owner has received prior written approval from the ACC.

**Section 6.8 Out-buildings.** Acceptable out-buildings include a storage shed, a work shop, a swimming pool, a gazebo and other accessory buildings and improvements strictly incidental and appropriate to single family use. However, all proposed out-buildings must either conform to guidelines promulgated by the ACC, or be included in a Development Plan approved in writing by the ACC.

**Section 6.9 Signs.** No sign, billboard, or advertising structure, including but not limited to "For Sale" and "For Rent" signs, shall be erected or maintained on any Lot or property within the Subdivision, unless approved in writing by the ACC or otherwise consistent with any signage rules that may be issued by the ACC. The forgoing provision shall not apply to the Declarant, who may erect signs as it deems necessary in connection with its construction and marketing activities.

**Section 6.10 Improvements and Alterations.** No Structures, Improvements, alterations, repairs, excavations or other work which in any way results in the permanent alteration of the exterior appearance of any Structure or the appearance of any other Improvements as it appeared on the date such Property was first conveyed in fee, or via a REC, to the current Owner or annexed by Declarant, whichever is later, shall be made or done without the prior written approval of the ACC.

**Section 6.11 Solar Equipment.** Request for approval of installation of any type of solar equipment shall be included in the Development Plan and approved in writing by the ACC.

**Section 6.12 Chemical Fertilizers, Pesticides or Herbicides.** No commercial chemical fertilizers, pesticides or herbicides other than those products which are readily available for consumer use and approved by an agency, such as the Food and Drug Administration, for the purpose intended shall be used on any of the Property, unless the same are being used and applied by duly licensed applicators.

## ARTICLE VII: RESTRICTIONS

**Section 7.1 Animals-Household Pets.** No pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than the Lot of its Owner unless confined to a leash or under voice control. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within an enclosed area which must be clean, sanitary and reasonably free of refuse, insects and waste at all times.

**Section 7.2 Maintenance of Lawns and Plantings.** Each Owner, on his Lot, shall keep all shrubs, trees, grass and planting of every kind which are Visible From the Street or from a dedicated road, Common Property or Common Facility, properly cultivated, pruned and free of trash and other unsightly material. Each Declarant, the Association and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon, at cost to Owner.

**Section 7.3 Clothes Drying Facilities.** Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Lot.

**Section 7.4 Hunting/Trapping/Firearms and Explosives.** Hunting, trapping and discharge of firearms or other explosives are expressly prohibited within the Subdivision.

**Section 7.5 Dumping.** Dumping of ashes, trash, rubbish, sawdust, garbage, land fill, solid waste and any type of refuse and other unsightly or offensive material is expressly prohibited within the Subdivision.

**Section 7.6 Waste.** The commission of waste is expressly prohibited within the Subdivision. "Waste" means an unreasonable or improper use, abuse, neglect or mismanagement which results in substantial injury to property or improvements, or which causes substantial diminution in value to property in which others have an interest.



**Section 7.7 Mineral Exploration.** No mining, quarrying, tunneling, excavation or drilling for exploration or removal of any minerals including oil, gas, gravel, rocks, earth or earth substances of any kind shall be permitted within the Subdivision. The provisions of this section do not apply to the normal earthmoving activities associated with construction of improvements in accordance with this Declaration and all applicable laws, regulations and requirements of governmental authorities with jurisdiction over the Property.

**Section 7.8 Obnoxious Activities.** No nuisance, obnoxious or offensive activities shall be permitted on any Lot, nor shall any rubbish or debris of any kind be placed or permitted to accumulate on or adjacent to any of the Property within the Subdivision, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any Lot in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provision, no speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot, which are audible from neighboring Lots. No Lot or portion thereof shall be used in whole or in part for the storage of inoperable vehicles or commercial equipment. No operable vehicles may be parked or stored other than in a garage, on a driveway or on the street during the day time.

**Section 7.9 Garbage.** No garbage or trash shall be placed or kept on any Lot except in covered containers located in accordance with any rules and regulations promulgated by the ACC in accordance with Section 6.3(g). All rubbish, trash, and garbage shall be removed from Lots and shall not be allowed to accumulate thereon. No incinerator shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted. Trash cans must be returned to a location that is out of sight, either in the garage, the back yard or the side yard behind the side gate or side return wall no later than midnight of the day on which trash has been collected.

**Section 7.10 Vehicles and Equipment.** No bus, truck larger than a one and one-half ton pickup, semi-trailer, tractor, machinery, or commercial equipment shall be kept, placed (except during the course of making deliveries for the purpose of loading or unloading), maintained, constructed, reconstructed, or repaired on the Property. No motor vehicle or trailer of any type shall be built, rebuilt or repaired on the Property other than in a garage. Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any type which are intended to be kept on the Property by the Owner must, to the extent possible, be garaged; and if kept outside must be parked on a concrete driveway behind the privacy wall on the Lot, screened or partially screened and in a location and in a manner approved by the ACC. No motorized vehicle of any kind may be operated in any manner that is dangerous, noisy or creates a nuisance.

**Section 7.11 Emergency or Temporary Maintenance Vehicles.** The provisions of this Declaration shall not prevent any emergency vehicle repairs or operation of an emergency vehicle within the Subdivision. The provisions of this Declaration shall also not prevent the operation or temporary use of construction vans, trucks, and machinery/equipment maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the ACC.

**Section 7.12 Motorcycles / All Terrain Vehicles.** The use of motorcycles or All Terrain Vehicles shall be limited to those which have been approved and are legal for street use. Such use shall be limited to the public streets.

**Section 7.13 Continuing Adequacy of Repair or Maintenance.** No Improvement upon the Property shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair and, if applicable, adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any Structure exterior and finish which was included in the Development Plan approved by the ACC.

**Section 7.14 Wood Piles and Storage Piles.** No wood pile or storage pile shall be located on any part of a Lot other than behind the rear yard privacy fence and may not be against any common fence or wall or be higher than the height of any authorized fence or wall. Any Structure of a permanent nature to be built with regard to these items must be included in the Development Plan and approved in writing by the ACC.

**Section 7.15 Gates, Walls, and Fences.** All gates, walls, and fences must be described in the Development Plan and approved by the ACC. Retaining walls shall be party walls if placed on the common property line between two (2) Lots and shall not be removed by either Owner. Liability as between the Owners with the respect to the maintenance and/or alteration of any party wall shall be as provided by the laws of the State of New Mexico. Except for necessary retaining walls, which shall be of minimum height, the following requirements shall apply to all walls and fences:

(a) Unless otherwise approved by the ACC, no wall or fence shall be erected or allowed to remain nearer the street than the front of the residential Structure except for retaining walls as shown on the grading and drainage plan; and

(b) Unless otherwise approved by the ACC, on Corner Lots, no wall or fence facing the side street shall be erected or allowed to remain nearer to the front street than thirty (30) feet.

(c) All walls and fences shall be built of Concrete Masonry Block, stucco covered block, frame / stucco, or wrought iron and of a color(s) approved by the ACC.

(d) All builders and/or Owners, as the case may be, shall be responsible for the construction of retaining and privacy walls on common property lines including rear property lines in accordance with all applicable federal, state, city and county codes and ordinances.

(e) No walls or fences shall be erected or placed on any Lot or Lots lower than four (4) feet nor higher than six (6) feet above ground level except as directed or approved by the ACC. Walls previously approved by the ACC at a height less than six (6) feet may be raised to not more than six (6) feet without further approval by the ACC, provided that the materials match the existing wall. "**Ground Level**", in this instance, is defined as the highest natural ground elevation on either side of the wall.

**Section 7.16 Mobile Homes, Modular Dwellings and Odd Shaped Structures.** Mobile homes, modular dwellings, and "A" frame, cubicle and dome structures are not allowed.

## ARTICLE VIII: ARCHITECTURAL CONTROL COMMITTEE

**Section 8.1 Establishment and Composition.** There is hereby established an Architectural Control Committee ("**ACC**"), which shall consist of three (3) to five (5) members. Members of the ACC shall serve without salary or pay and none of the members shall be required

to be an architect or to meet any other particular qualifications for membership. Notwithstanding the forgoing, prior to the to the turn over of control of the Association by both Declarants, as set forth in Section 9.6, the ACC shall consist of two members, one chosen by each Declarant.

**Section 8.2 Voting.** Except as otherwise provide herein, a vote or written consent of a majority of the members of the ACC at a meeting or otherwise shall constitute the act of the ACC.

**Section 8.3 Terms of Office.** Unless the initial members of the ACC have resigned or been removed, their terms of office shall be for a period of two (2) years, beginning as of the date of recordation of this Declaration, and to the extent their successors have not been chosen at the end of said two (2) years, thereafter until appointment of their respective successors.

Thereafter, the term of each ACC member appointed shall likewise be for a period of two (2) years and thereafter until the appointment of a successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or whose terms have expired may be reappointed.

**Section 8.4 Appointment and Removal.** Except as provided below, the right to appoint and remove all regular members and alternate members of the ACC at any time, with or without cause, shall be, and hereby is, vested solely in both Declarants. At such time as both Declarants own together less than twenty-five percent (25%) of the Lots (in number) or at such time that a Declarant records a waiver of the right herein retained, whichever event occurs first, the right to appoint and remove all regular and alternate members of the ACC shall automatically be transferred to the Board of Directors. Appointment of all regular and alternate members of the ACC shall thereafter be appointed by a majority of the Board of Directors.

**Section 8.5 Resignations.** Any regular member or alternate member of the ACC may resign at any time by giving written notice thereof to Declarant or the Board of Directors as the situation requires.

**Section 8.6 Vacancy.** Vacancies on the ACC, however caused, shall be, except as provided in Section 8.4 of this Article, filled by the Board of Directors. A vacancy shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

**Section 8.7 Transfer of Authority to the Association.** The duties, rights, powers and authority of the ACC constituted hereby may be assigned at any time, at the sole election of a majority of the Board of Directors, to the Association, and from and after the date of such assignment, and the acceptance thereof by the Association, the Association shall have full right, authority and powers, and shall be obligated to perform the functions of the ACC as provided herein (and in the Bylaws of the Association).

**Section 8.8 Address.** The address of the ACC shall be c/o Centex Homes, 7601 Jefferson, NE, Albuquerque, New Mexico 87109 or such other place as may from time to time be designated by the ACC by written instrument, a copy of which is sent to all then current owners; and the last such instrument shall be deemed the ACC's proper address.

**Section 8.9 Duties.**

(a) **General.** It shall be the duty of the ACC to receive, consider and act upon all proposals, plans, complaints, requests for determination, Development Plans or other matters

submitted pursuant to the terms of this Declaration, and to carry out all other duties imposed on it by this Declaration.

(b) **Development Plan Compliance Deposit.** The ACC may require a building compliance deposit to assure compliance of the Improvements with this Declaration. The ACC will refund this building compliance deposit after completion of the Improvements if in the ACC's sole discretion there is satisfactory evidence that all of the Improvements were completed in compliance with this Declaration. The ACC may also charge a non-refundable review fee in such amount as may be set by the ACC, and approved by the Board of Directors, from time to time.

**Section 8.10 Meetings.** The ACC shall meet from time to time as necessary to perform its duties hereunder. Subject to provisions of Section 8.2 above, and except as otherwise provided herein, the vote or written consent of a majority of the regular members at a meeting or otherwise shall constitute the act of the ACC. The ACC shall keep and maintain written records of all actions taken by it at such meetings or otherwise.

**Section 8.11 Action Without Formal Meeting.** The ACC, in accordance with Sections 8.2 and 8.10 hereof, may take action without a formal meeting by unanimously consenting in writing on any matter, which it might consider at a formal meeting. Such unanimous written consent shall constitute the act of the ACC. For the purposes hereof, unanimous written consent shall mean a writing by the three (3) regular members of the ACC except as the provisions of Section 8.2 may apply.

**Section 8.12 Procedure for Submission and Approval of Development Plan.**

(a) Submission of a Development Plan shall be in accordance with the Rules promulgated by the ACC, as authorized by Section 8.14 hereof.

(b) The ACC shall endeavor to approve or disapprove any material or Development Plan submitted to it hereunder within thirty (30) days after the date shown on the submittal receipt. The ACC may extend the time for its review by an additional thirty (30) days by notice to the Owner. If after sixty (60) days the ACC has failed to approve or disapprove any material or Development Plan submitted to it hereunder, or fails to give notice of its actions, it shall be conclusively presumed that the ACC has approved such materials as submitted; provided, however, in no event shall any Structure be erected which violates any of the covenants contained herein or any applicable building code or statute, ordinance or other governmental regulation. If the ACC requests additional or amended materials or an amended Development Plan from the Owner, or approves on condition that certain additional or amended materials be submitted, such period shall automatically be extended an additional fifteen (15) days following the date upon which such additional or amended materials are required to be delivered to and received by and receipted for by the ACC. Additional fifteen (15) day extensions shall occur if further additional or amended materials are requested or required during any subsequent extension period. If the additional or amended materials are not received on or before the required date, then the Development Plan shall be automatically disapproved.

**Section 8.13 Waiver and Estoppel.** The approval by the ACC of any Development Plan, specifications or drawings or any materials accompanying it for matters requiring approval of the ACC shall not be deemed to constitute a waiver of or create any right of estoppel against the ACC's right to withhold approval of any similar Development Plan, drawing, specification or matter subsequently submitted for approval.

**Section 8.14 ACC Rules.** The ACC shall have the authority to adopt, amend, add to, replace and rescind, from time to time, procedural or substantive rules to make more definite and certain, and to carry out the purpose and intent of the provisions of this Declaration. Any conflict between such rule and any provision of this Declaration shall be resolved in favor of the provision of this Declaration. A copy of such rules in effect from time to time shall be provided to any Owner requesting the same in writing, upon receipt of the cost of such copy; provided that the failure to deliver a copy of any such rules, or the failure of the ACC from time to time to adopt any such rules shall not in any manner inhibit or impair the requirement that a Development Plan be approved by the ACC prior to construction, or any other provision of this Declaration.

**Section 8.15 Basis for ACC Approval or Disapproval.** The Subdivision is intended by Declarant to be a cohesive development composed of homes of the highest quality and elegant appearance. Toward this end, it is intended that the ACC have the greatest degree of discretion possible in reviewing, approving or disapproving Development Plans. Declarant intends that the ACC shall have the right to consider as the basis for any approval or disapproval of a Development Plan: (a) compliance or noncompliance with certain objective standards set out in this Declaration or in any rules or guidelines subsequently published or adopted by the ACC, (b) the nature and quality of the building materials and methods of construction to be used, (c) the location of the proposed Improvements on the Lot, (d) the visual impact of the proposed Improvements from the standpoint of style and consistency with other Improvements constructed or approved by the ACC for construction in the Subdivision, (e) the experience and expertise of the general contractor, and such other subjective factors as the ACC shall, in its discretion, deem relevant or appropriate. **ANY PERSON PROPOSING TO PURCHASE ANY LOT IN THE SUBDIVISION IS CAUTIONED TO CONSULT WITH THE ACC CONCERNING INTENDED IMPROVEMENTS PRIOR TO BECOMING UNCONDITIONALLY OBLIGATED TO PURCHASE SUCH LOT.**

**Section 8.16 Deviation from Approved Plan.** All Development Plans approved in writing by the ACC must be complied with strictly and any deviation, change or alteration not in compliance with said Plan must be further approved in writing by the ACC. Violation thereof shall be subject to enforcement in accordance with the provisions of this Declaration.

**Section 8.17 Decisions Conclusive.** All decisions of the ACC shall be final and conclusive, and no Owner or any other person, association or entity shall have any recourse against the ACC, or any member thereof, for its or such member's approval or refusal to approve all or any portion of a Development Plan or of any materials submitted therewith, or for any other decision rendered under the authority of this Declaration. Notwithstanding the foregoing, Owners may appeal a decision of the ACC to the Board of Directors of the Association.

**Section 8.18 Liability of the Declarant and ACC.**

(a) **Generally.** Neither Declarant nor the ACC or any member thereof shall be liable to any Owner, or any other person, association, or entity, for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any Development Plan or any materials submitted therewith, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to an approved Development Plan or any materials submitted therewith; (iii) the development of the Property; (iv) the structural capacity or safety features of the proposed Improvement or Structure; (v) whether or not the location of the proposed Improvement or Structure on the building site is free from possible hazards from flooding or from any other possible hazards, whether caused by conditions occurring either upon or off the Property; (vi) soil erosion causing sliding conditions; (vii) compliance with governmental laws, ordinances and regulations; (viii) any decision made or action taken or omitted to be taken under the authority of this

Declaration; (ix) any act taken or decision made in connection with any land contiguous to the Subdivision, including, but not limited to any decision to annex or refuse to annex to the Subdivision other contiguous land or property; (x) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member, such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the ACC, or any member thereof, may but is not required to consult with or determine the view of any other Owner with respect to any Development Plan, or any materials submitted to the ACC.

**(b) Regarding Soil Characteristics.** Whether the soil, or a certain site on the Lot, is suitable for the design of the Single-Family Residential Unit that the Lot Owner ultimately builds depends on the footing and foundation design and plans used for construction on the Lot. Declarant and the ACC and its Members make no warranty or representation that the soil characteristics, and all locations on the Lot, are suitable for all designs or plans. Neither Declarant nor the ACC or its members make any warranty or representation regarding any specific design or plan. The suitability of the soils and the construction needs based on the soils will vary depending on the specific Lot and the location and design of the Single-Family Residential Unit.

**Section 8.19 Modifications and Waivers.** The ACC, upon such terms and conditions, upon the payment of such fees or expenses, and for such procedures as it may prescribe, may, but is not required to, adopt, review and approve or disapprove, in whole or in part, with or without conditions, applications for the modification or waiver of any requirement of Subsections 6.3(a), (b), (d), (h), (i), and 6.5 through 6.11 of this Declaration or any requirement of the ACC rules applicable to any Improvement or use of, in, on or abutting any Lot. Such applications shall contain such information as the ACC may prescribe and shall affirmatively show that the application of such requirements, under the circumstances, creates unnecessary and undue hardship, and that a modification or waiver will not be detrimental (aesthetically, economically, or otherwise) to the Owner of any other Lot. The ACC may decide the matter upon the application and any materials or written statements accompanying it or may allow oral presentations in support of or in opposition to the application prior to the decision, at its discretion. The ACC shall render a decision in writing, which decision need not contain any reasons, findings, or conclusions for the decision and shall forward one (1) copy to the applicant, and retain one (1) copy in its records. Without limiting the general applications of this Section 8.19, the provisions of Section 8.15 and Section 8.17 of this Article shall apply to the actions and the decisions of the ACC and its members under this Section.

**Section 8.20 Governmental Agency Approval.** Nothing in this Declaration shall relieve or be interpreted to relieve any Owner from securing such approval(s), certificate(s) or permit(s) of any governmental agency or entity with jurisdiction as may be required by law as a condition to the commencement, construction, maintenance, addition, change or alteration to or of any Improvement, and the ACC may require that a copy of such approval(s), certificate(s) or permit(s) be provided to the ACC as a final condition to approval of a Development Plan, or as additional assurance to the ACC that the Improvements and uses of an approved Development Plan meet governmental requirements, or for both such purposes.

## ARTICLE IX: HOMEOWNERS ASSOCIATION

**Section 9.1 The Association.** Declarant has or shall cause the formation and incorporation of the Association as a non-profit corporation organized and existing under the New Mexico Non-Profit Corporation Act, charged with the duties and vested with the powers prescribed

by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**Section 9.2 Membership.** Each Owner (whether one or more persons or entities) of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until the Owner's ownership ceases for any reason, at which time the Owner's membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association and no certificate of membership will be issued.

**Section 9.3 Voting.** Subject to the provisions of Section 9.7, all Members of the Association in good standing shall be entitled to one (1) vote (in person or by proxy) for each Lot owned at any meeting of Members of the Association or with respect to any matters submitted to a vote of the Members of the Association. If more than one person holds an interest in any Lot, all such persons shall be Members of the Association. The single vote for a multiple-owner Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. The Articles of Incorporation and Bylaws of the Association may provide more specific rights with respect to voting by Members.

**Section 9.4 Proxies.** At all meetings of Members, each Member may vote in person or by proxy upon such terms as may be determined from time to time by the Board of Directors of the Association. All proxies shall be in writing, sealed and personally delivered by the person executing the proxy to a board member or returned by the United States Postal Service to the person designated by the Board of Directors, and filed with the Association secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of the Lot.

**Section 9.5 Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the directors may elect or appoint, in accordance with the Articles of Incorporation and the Bylaws, as may be amended from time to time ("**Board of Directors**").

**Section 9.6 Control of the Association.** Until the first to occur of (a) conveyance by both Declarants of seventy-five percent (75%) in number of the Lots each owns in the Subdivision or (b) January 1, 2012, said Declarants shall each be entitled to cast three (3) votes for each Lot it owns. Thereafter, each Declarant shall be entitled to one (1) vote for each Lot it owns.

**Section 9.7 Powers and Duties of the Association.** The Association shall have such rights, powers and duties as set forth in the Articles of Incorporation and Bylaws, as the same may be amended from time to time.

**Section 9.8 Personal Liability.** No member of the Board of Directors or any committee of the Association or any of the officers of the Association shall be personally liable to any Owner or any other party including the Association for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board of Directors, any committee, or any other agent, representative or employees of the Association; provided, however, that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

## ARTICLE X: ASSESSMENTS

**Section 10.1 Operating Expense and Reserve Funds.** All monies collected by the Association for the regular operating expense and reserve charges provided for in this Article shall be separated into two funds, which shall constitute and be known as the "**Operating Expense Fund**" and the "**Reserve Fund**." The Operating Expense Fund and the Reserve Fund shall be held, used, and expended by the Association for the common benefit of all Members to promote the health, safety, recreation, and welfare of the Members, including, without limitation:

- (a) maintenance and construction of any privately maintained streets, bridges, culverts and related Improvements;
- (b) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of the Common Properties and Common Facilities in the Subdivision;
- (c) the installation, construction, erection, and relocation of Improvements related to the enhancement and beautification of any other areas provided by this Declaration to be developed or maintained by the Association, including landscaping in rights-of-ways and maintenance of perimeter walls and entry way signs, as well as the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members;
- (d) payment of utility charges in connection with the operation or use of the Common Property;
- (e) payment of charges for maintenance, upkeep, beautification, improvement and replacement of park, rights-of-way, and Common Property landscaping; and other services contracted for by the Association;
- (f) property management, accounting and legal fees, including legal fees incurred by the Association while enforcing the provisions of this Declaration.

The Association may, in its sole discretion, determine which monies are to go into each fund and may give one or more of the purposes set forth in this Section 10.1 preference over other purposes. It is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith shall be binding and conclusive on all Members.

**Section 10.2 Regular Assessments.** Each and every Lot in the Property is hereby severally subjected to and impressed with a regular operating expense and reserve charge or Assessment, as determined by the Board of Directors. Said charge shall commence upon the closing of the purchase of each Lot and be due and payable on said date (prorated, if appropriate) and on the first day of each January thereafter, or at such other times as may be determined by the Board of Directors, and which shall run with the land, and shall be subject to increase and decrease in accordance with the Articles of Incorporation and Bylaws of the Association.

**Section 10.3 Special Assessments.** Each and every Lot in the Property shall be severally subjected to and impressed with any special assessment deemed necessary and adopted by the Board of Directors. Any such Assessment shall be due and payable on such date(s) as may be determined by the Board of Directors and shall run with the land.



**Section 10.4 Covenant for Assessments.** Each Owner of a Lot, by the Owner's claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and Assessments against the Owner's Lot and/or assessed against the Owner as the same shall become due and payable, without demand. The charges and Assessments herein provided for shall be a charge and a continuing lien upon each Lot, as hereinafter more particularly stated. Each Assessment, together with late fees, transfer fees, fines, interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such Assessment accrued, and no Member shall avoid personal liability for the payment of any Assessment by waiver of the use or enjoyment of the Common Properties or Common Facilities, or any part hereof, or by abandonment of the Owner's Lot or the Owner's interest therein.

**Section 10.5 Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the regular maintenance charges or Assessments and any special charges against each Lot or Owner 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 Lots and Assessments applicable thereto which shall be kept in the office of the Association, or the property manager, if any, and shall be open to inspection by any Owner. Written notice of such Assessment shall be sent to every Owner subject thereto. The Association, or the property manager, if any, shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, or the property manager, if any, 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.

The Board of Directors of the Association may impose sanctions (as set forth in Article VI of the Bylaws) for violation of this Declaration and/or the Bylaws, after notice and an opportunity for a hearing in accordance with the procedures set forth in Section 11.3 of this Declaration. The Association shall not be obligated to take any enforcement action if the Board of Directors reasonably determines that the Association's position does not justify taking such action. Such a decision shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenants, restriction or rule.

**Section 10.6 Payment of Fines.** In the event that any Owner, occupant, tenant, employee, guest, or invitee of an Owner violates the Declaration and/or Bylaws, or any rule or regulation, and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the occupant is not the Owner and the fine is not paid by the occupant within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association.

**Section 10.7 Liens to Secure Assessments.** All Assessments shall be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each (or the applicable) Lot and all improvements thereon, for the benefit, as appropriate, of the Association. Subject to the condition that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by city, county and state government, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under REC, any first mortgage or deed of trust, made in good faith and for value, filed for record, prior to the date that payment of any such charges or Assessments becomes due and payable.

Any judicial foreclosure of any such superior lien under any mortgage, deed of trust, or other security instrument in which the Association has been made a party, shall cut off and extinguish the liens securing Assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing Assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay Assessments which become due prior to such foreclosure be extinguished by any foreclosure.

**Section 10.8 Effect of Non-Payment of Assessments.** If any Assessment is not paid within thirty (30) days from the due date thereof, a late fee shall be owed, the amount of which will be determined annually by the Board of Directors, plus the Assessment shall bear interest from the due date until paid at eighteen percent (18%) per annum, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association, an additional reasonable amount for attorney's fees and costs. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against the Member's Lot. All such actions may be instituted and brought in the name of the Association, and may be maintained and prosecuted in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

**Section 10.9 Collection and Enforcement.** Each Member, by the Member's assertion of title or claim of ownership or by the Member's acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of Assessments and/or for the enforcement and foreclosure of the liens securing the same. Nothing herein shall require mortgagees to collect Assessments and failure to pay Assessments does not constitute a default under any mortgage.

**Section 10.10 Transfer Fee.** A transfer fee, in an amount to be determined from time to time by the Board of Directors, may be charged upon the sale or resale of any Lot. Such fee shall be due and owing at the time of the transfer.

## ARTICLE XI: GENERAL PROVISIONS

**Section 11.1 Cost of Performance.** Cost and expense in performing any obligation or responsibility in this Declaration shall be borne by the person, association, or entity charged with such performance or responsibility and shall be subject to the provisions of Article X hereof.

**Section 11.2 Breach not Ground for Rescission.** No breach or continuing breach of the restrictions, covenants, conditions, duties or obligations imposed, allowed or granted by this Declaration shall be grounds for cancellation, termination or rescission of this Declaration or of any provision hereof.

### Section 11.3 Enforcement.

(a) **Notice.** Except where damage or injury to persons or Property is imminent as a result of the performance or failure to perform or the defective performance of any obligation

imposed or action restricted by this Declaration or where animals are involved, no sanction shall be levied and no legal proceeding for the enforcement of the restrictions, covenants, conditions, rights and duties imposed, allowed or granted by this Declaration shall be commenced, until a ten (10) day written notice of the violation of this Declaration or the wrongful action or performance, defective performance or failure of performance, is given to the person, association or entity responsible for such violation, wrongful or defective performance or failure to perform. Such notice shall be deemed to be given if deposited in the U.S. Mail, mailed postage prepaid, certified, return receipt requested to the address of the Lot owned by such person, association or entity, unless the Association has previously been notified by such person, association or entity in writing to use some other address, in which case to such other address. The ten (10) days shall commence with the date of mailing thereof. Said notice shall describe (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board of Directors; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made the sanction stated in the notice shall be imposed; provided that the Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

(b) **Hearing.** If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board of Directors. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the person who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

**Section 11.4 Additional Enforcement Rights.** Declarant, the ACC, the Association, and any Owner shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed or granted by the provisions of this Declaration. In any such proceedings, the prevailing party or parties shall be entitled to recover its cost and expenses, including reasonable attorneys' fees, and such costs and expenses shall be subject to the provisions of Section 10.9. Failure by Declarant, ACC, Association or Owner to enforce any restriction, covenant, condition, duty or right herein contained shall in no event be deemed a waiver of their respective rights to do so at a later time. Notwithstanding anything to the contrary elsewhere in this Declaration, the Board of Directors may elect to enforce any provision of the Declaration and/or By-Laws, or any rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) without the necessity of compliance with procedures set forth in Section 11.3 above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including attorneys' fees reasonably incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed a trespass.

**Section 11.5 Attachment of Covenant on Resale or Remodel.** This Declaration shall attach following the lease or resale of the Property, or any Lot, and any remodeling or other alteration of any Improvement must be approved by the ACC through the Development Plan process.

**Section 11.6 Covenants to Run with the Land.** The restrictions, easements, covenants, conditions, rights and duties of this Declaration shall run with and bind the land within the Property, as defined herein, and shall inure to the benefit of the Owner of any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded in the real property records of Sandoval County, New Mexico, after which time such restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive periods of ten (10) years, unless amended, modified or repealed as hereinafter provided.

**Section 11.7 Modification, Amendment or Repeal.** Any of the provisions of this Declaration may be modified, amended or repealed by a recorded written instrument, executed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots.

**Section 11.8 Severability.** Invalidation of any of the provisions hereof by a final judgment or decree of any court shall in no way affect or impair the validity of any other provision hereof.

**Section 11.9 Joint and Several Obligations.** The terms of this Declaration in effect on the date of any lease or recording of a sheriff's deed, trustee's deed, deed in lieu of foreclosure, other deed, other order or decree declaring, settling or confirming title, pursuant to which one or more persons, associations or entities becomes a tenant or an Owner as hereinbefore defined, shall be binding upon such Tenant or new Owner and such tenant or new Owner shall be jointly and severally liable with the landlord or the immediate prior Owner for any continuing performance, failure of performance or defective performance of any act or obligation restricted or imposed hereunder.

**Section 11.10 Successors.** Deeds of conveyance of any Lot may contain the provisions, restrictions, covenants and conditions contained herein by reference to this Declaration; however, whether or not such reference is made in any or all said deeds, by becoming an Owner as herein defined of any of the Property, each such Owner, for himself or herself or itself, his or hers or its heirs, personal representatives, successors, transferees and assigns, binds himself or herself or itself and such heirs, personal representatives, successors, transferees and assigns to all the provisions, restrictions, covenants and conditions now or hereafter imposed by or under the authority of this Declaration and any amendments hereof.

**Section 11.11 Assignment of Rights and Obligations of Declarant.** The rights of Declarant hereunder are fully assignable to any person, association or entity and any and all obligations and duties of Declarant are fully delegable and assignable to any person, association or entity.

**Section 11.12 Word Meanings.** The words "herein," "hereafter," "hereof," "hereunder" and "hereinabove" refer to this Declaration as a whole and not merely to a section or paragraph or article in which such words appear unless the context otherwise requires. Singular shall include the plural and the masculine gender shall include the feminine and neuter and vice versa unless the context otherwise requires.

**Section 11.13 Captions and Section Headings.** The captions and headings of various articles, sections, paragraphs or subparagraphs of this Declaration are for convenience only and are not to be considered as defining or limiting in any way the intent of the provisions hereof.

**Section 11.14 Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection and maintenance by either Declarant of Structures, Improvements

or signs necessary or convenient to the development, sale, operation or other disposition of the Property within the Subdivision. Each Declarant is likewise exempt from having to obtain ACC approval of its plans and specifications, or any modifications thereto, as they have already been approved, which approval allows for modifications thereto.

**Section 11.15 Mortgagee Approval.** So long as one or both Declarant holds more than a majority of the voting power of the Association, HUD or VA approval is required prior to the following: (a) amendment to the Association's Articles of Incorporation, By-Laws or this Declaration; (b) annexation of property to the Association; (c) encumbering, conveying or dedicating Common Properties (other than the conveyances anticipated herein); or (d) dissolution of the Association.

IN WITNESS WHEREOF, the undersigned, each being Declarant herein, has set its hand and seal this 23 day of MARCH, 2007.

**DECLARANT:**

D. R. HORTON, INC.,  
a Delaware corporation

By: J. Mark Ferguson  
J. Mark Ferguson  
Division President

**DECLARANT:**

CENTEX HOMES,  
a Nevada general partnership

By: Centex Real Estate Corporation  
Its Managing Partner

By: Virgil Polk  
Virgil Polk, Division President  
New Mexico Division

SANDOVAL COUNTY  
200712572

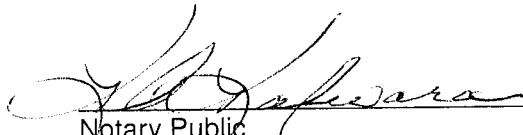
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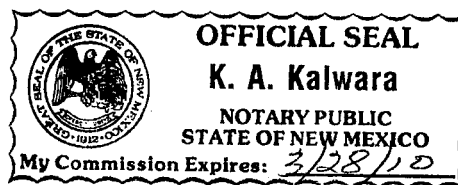
ACKNOWLEDGMENTS

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

The foregoing instrument was acknowledged before me this 22 day of MARCH, 2007, by J. Mark Ferguson, Division President of D. R. Horton, Inc., on behalf of said corporation.

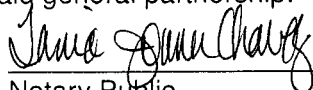
  
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Notary Public

My Commission Expires: 3/28/10

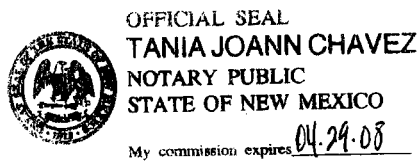


STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

The foregoing instrument was acknowledged before me this 22 day of March, 2007, by Virgil Polk, President of New Mexico Division of Centex Real Estate Corporation, Managing Partner of Centex Homes, on behalf of said general partnership.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 04-29-08



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**Exhibit A**

Legal Description of the Property Owned by  
D. R. Horton, Inc.

Lots 1-34, Block 1; Lots 1-18, Block 2; Lots 1-16, Block 3; Lots 1-19, Block 4; Lots 1-24, Block 5; Lots 1-20, Block 6, Lots 1-24; Block 7; Lots 1-29, Block 8; Lots 1-4 and 18-20, Block 9; Lots 10-18, Block 11; Lots 10-17, Block 12, plus Tract lettered A, Toscana at Cabezon a Subdivision of Tracts 10-A-1 and 10-A-2, within Cabezon Subdivision, within Projected Section 36, T. 12 N., R. 2 E., N.M.P.M., City of Rio Rancho, Town of Alameda Grant, Sandoval County, New Mexico recorded on October 4, 2006 In Rio Rancho Estates Plat Book No. 20, Pages 9-13 (Vol. 3, Folio 2717-B), Instrument No. 200649175.

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**Exhibit B**

Legal Description of the Property Owned by  
Centex Homes

Lots 35-108, Block 1; Lots 5-17, Block 9; Lots 1-30, Block 10; Lots 1-9 and 19-27, Block 11; Lots 1-9 and 18-26, Block 12, Lots 1-38, Block 13; Lots 1-21, Block 14; Lot 1-18, Block 15; and Lots 1-18, Block 16, plus Tracts lettered B-E, Toscana at Cabezon a Subdivision of Tracts 10-A-1 and 10-A-2, within Cabezon Subdivision, within Projected Section 36, T. 12 N., R. 2 E., N.M.P.M., City of Rio Rancho, Town of Alameda Grant, Sandoval County, New Mexico recorded on October 4, 2006 In Rio Rancho Estates Plat Book No. 20, Pages 9-13 (Vol. 3, Folio 2717-B), Instrument No. 200649175.

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