

**PROTECTIVE COVENANTS,  
IMPOSED UPON WILLOW TRACE SUBDIVISION  
ALBUQUERQUE, NEW MEXICO**

THIS STATEMENT OF PROTECTIVE COVENANTS, IMPOSED UPON WILLOW TRACE SUBDIVISION, ALBUQUERQUE, NEW MEXICO is made as of October 6, 2004 by Pulte Homes of New Mexico, Inc., a New Mexico corporation, with respect to that certain real property situated in Bernalillo County, New Mexico and more particularly described as follows:

A tract of land situate within the Town of Alameda Grant, projected Section 19, Township 12 North, Range 3 East, New Mexico Principal Meridian, City of Rio Rancho, Sandoval County, New Mexico being all of PARCEL 2C, THE HIGH RESORT as the same is shown and designated on said plat filed for record in the office of the County Clerk of Sandoval County, New Mexico on October 21, 1986 in Volume 3, Folio 602-B (RRE 4, Page 86) together with all of TRACT A-1, CHAMISA HILL COUNTRY CLUB – NORTH as the same is shown and designated on said plat filed for record in the office of the County Clerk of Sandoval County, New Mexico on May 20<sup>th</sup> in Volume 3, Folio 2289-A (Rio Rancho Bk. 15, Pg. 55) and containing 14.8776 acres more or less.

It is hereby declared that all of the above described real property is subject to this Declaration which is for the purpose of creating and maintaining a residential development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property, with portions of the property being owned, operated and managed by an association of homeowners for the common benefit of the homeowners.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of Developer, the Association, each Owner of the described real property or any part of it, and each successor in interest of Developer, the Association, and any such Owner.

**ARTICLE 1  
Definitions**

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings assigned in this Article.

**“Architectural Committee”** or **“Committee”** shall mean the architectural control committee created pursuant to Article 8.

**“Association”** shall mean the Willow Trace Homeowners’ Association, Inc., a New Mexico nonprofit corporation described in Article 5 and any predecessor or successor organization, whether or not incorporated.

**“Assessment”** shall mean an annual assessment, a special assessment, and/or non-compliance assessment.

**“Board of Directors”** or **“Board”** shall mean the Board of Directors of the Association and the governing body of any predecessor or successor organization.

**“Bylaws”** shall mean the Bylaws of the Association adopted pursuant to the Articles of Incorporation of the Association and the New Mexico Nonprofit Corporation Act, Sections 53-8-1 through 53-8-99, NMSA 1978.

**“Common Area(s)”** shall mean portions of the Subdivision which have been or will be conveyed to the Association or portions of the Subdivision that are to be maintained by the Association.

**“Declaration”** shall mean this Statement of Protective Covenants Imposed upon Willow Trace Subdivision.

**“Developer”** shall mean Pulte Homes of New Mexico, Inc., a New Mexico corporation, its successors and assigns, who are assigned in writing all or part of Developer’s powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Developer shall be recorded, filed with the Board and placed with the records of the Association. Each person or entity named as Developer in an assignment may exercise the rights of Developer provided by the Restrictions for the area assigned, but no general power, such as the power to annex, shall be partially assigned, except for an assignment of all rights under this Declaration.

**“Eligible Mortgagee”** means any holder of a first mortgage lien against any Lot provided that such mortgagee has given the Association written notice of its mortgage setting forth its name and address and identifying the Lot, by legal description and address, which is subject to such first mortgage.

**“Fiscal Year”** shall be the calendar year.

**“Home(s)”** shall mean the attached single-family residential units to be constructed on the Lots.

**“Improvements”** shall include, without limitation, buildings, roads, driveways, parking areas, patio walls, subdivision exterior walls or fences, stairs, decks, windbreaks, poles, antennas, signs, rocks, plantings, utility or communication installations (whether above or underground), affixed recreational equipment, and any structure and excavation of any type or kind and all other structures or landscaping of every type and kind. The term shall include Homes, unless the context otherwise requires.

**“Landscape”** Area(s) shall mean certain real property located within the Subdivision owned by the public, including but not necessarily limited to the entrances to the Subdivision and landscape easements referred to as landscape easements on the recorded plat, all of which is or will be landscaped and maintained by the Association for the common enjoyment of the Association members.

**“Lot”** shall mean each of the 82 Lots located within the Subdivision and shown on the Plat together with the improvements located on each such Lot.

**“Mortgage”** shall mean a deed of trust, as well as a mortgage, and the term “Mortgagee” shall mean a beneficiary under or a holder of a deed of trust, as well as a mortgagee.

**“Non-compliance Assessment”** shall mean assessments imposed for violation of the Declaration, Articles of Incorporation, Bylaws, Design Guidelines, or Willow Trace Rules and Regulations, pursuant to the procedures established from time to time by the Board. Such assessments shall be punitive in nature and may be imposed without regard to whether or not monies have been expended by the Association as a result of such violation.

**“Owner”** shall mean the persons or entities, including Developer, holding the beneficial ownership of the fee, including the purchaser under a real estate contract and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of Article 3, unless the context otherwise requires, Owner shall include the family, invitees, licensees and tenants of any Owner.

**“Party Wall”** shall mean a wall or fence constructed on or immediately adjacent to the common boundary of Lots or tracts or the common boundary of Common Areas and a Lot or tract.

**“Perimeter Walls”** shall mean all the walls on the perimeter of Willow Trace.

**“Plat”** shall have the meaning assigned to such term in the preamble of this Agreement.

**“Public Right of Way”** shall mean a strip of land located between the sidewalk and the street.

SANDOVAL COUNTY

200432788

Book-407 Page-

2 of 23

10/15/2004 01:20

**“Rules and Regulations or the Willow Trace Rules”** shall have the meaning assigned to such term as set forth in Article 5.

**“Subdivision”** shall mean the subdivision known as Willow Trace, which is subject to this Declaration.

**“Subdivision Restrictions”** and **“Restrictions”** shall mean this Declaration including the limitations, easements, restrictions, covenants, and conditions set forth herein, as this Declaration may from time to time be amended.

## **ARTICLE 2**

### **Property Subject to Subdivision Restrictions**

All of the property shown on the Plat is subject to and benefited and burdened by the Restrictions.

## **ARTICLE 3**

### **Permitted and Prohibited Uses of Property**

**3.1 Use of Subdivision, Homes and Common Areas.** No part of the Subdivision shall be used for any purpose except attached single-family residential housing and the common purposes for which the Common Areas were designed. Each Home shall be used as a residence for a single family, its servants and guests.

**3.2 Obstruction of Common Areas.** There shall be no obstruction of the Common Areas. Nothing shall be stored on the Common Areas without the prior consent of the Board of Directors.

**3.3 Violations of Laws and Insurance.** No Owner shall permit anything to be done or kept in such Owner’s Home or the Common Areas which will result in the cancellation of insurance on the Common Areas or which would be in violation of any law, ordinance or regulation.

**3.4 Trash Disposal.** All garbage and trash must be placed in the proper receptacle designated for refuse and recycling collection and shall be stored out of site in the garage or on side or back of the house except on collection day, and no garbage or trash shall be placed in or on any of the Common Areas. All rubbish trash, and garbage shall be regularly removed from the Home and shall not be allowed to accumulate thereon.

**3.5 Home Maintenance.** Each Owner shall keep such Owner’s home and lot in a good state of preservation, repair and cleanliness to include all landscaping.

**3.6 Nuisance, Offensive Activities and Noise.**

(a) **Nuisance.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkept, condition in, on, or around his or her Home. No Home shall be used, in whole or in part, for the storage of any property, substance, material or thing that causes or has the potential to cause any of the following (i) such Home to appear to be in an unclean or untidy condition or be obnoxious to the eye (ii) such Home to emit foul or obnoxious odors or (iii) any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Owners or occupants of surrounding property. No obnoxious or offensive activities shall be carried on within or upon any Home, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any nearby Owners or occupants. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision.

(b) **Activities Causing Unsightly Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkept conditions, shall not be pursued or undertaken on any part of the Subdivision.

**3.7 Parking Areas.** No buses, trucks (except pick-up trucks of one ton or less), trailers, boats, recreational or commercial vehicles shall be parked in driveways.

**3.8 Parking and Traffic Regulations.** All Owners shall observe and abide by all parking and traffic regulations as posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the Owner's sole risk and expense. Vehicles may be parked only in garages, driveways, or on the street, never on any landscaped areas and/or front yards, side yards or rear yards.

**3.9 Illegal Parking or Blocking.** Parking so as to block sidewalks and driveways shall not be permitted. If any vehicle owned or operated by an Owner, any member of such Owner's family, tenants, guests, invitees, or licensees shall be illegally parked or abandoned on the Subdivision, the Association shall be harmless by such Owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provision or state or local laws and ordinances are hereby expressly waived. The Owner shall indemnify the Association against any liability, which may be imposed on the Association as a result of such illegal parking or abandonment and any consequences thereof.

**3.10 Campers, Boats and Recreational Vehicles.** No campers, boats marine craft, hovercraft, boat trailers, travel trailers, motor homes, camper bodies, golf carts, and other type 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. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment will be permitted in any driveway or yard.

**3.11 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 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 in the Subdivision at any time. No vehicles or similar equipment may be parked on the landscaped areas of any Lot or Common Area including but not limited to any front yard, side yard or rear yard.

**3.12 Motor Vehicles.** No vehicles or similar equipment will be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks, and pick-up truck with attached bed campers that are in operating condition and have current license plates and are in daily use. No abandoned, derelict, inoperable or unlicensed vehicles may be stored or located on any Lot.

**3.13 Business Operation.** Owner or occupant residing in a Home may conduct business activities within the Home so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Home; (b) the business activity conforms to all zoning requirements for the Subdivision; (c) the business activity does not involve persons coming into the Subdivision who do not reside in the Subdivision or door-to-door solicitation of residents of the Subdivision; and (d) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other resident of the Subdivision, as may be determined in the sole discretion of the Board.

**3.14 Signs.** Except for signs permitted by the last sentence of this Paragraph, no signs, including but not limited to sports signs, business or personal signage, or other window displays or advertising shall be maintained or permitted on any part of the Subdivision or in any Home. The right is reserved by the Declarant and the Board of Directors or the Managing Agent, to place "For Sale," "For Rent," or "For Lease" signs on any unsold or unoccupied homes and the right is hereby given to any Mortgagee. In no event will any sign described in this Paragraph be larger than one foot by two feet other than signs which

are commercially purchased or those customarily used by licensed real estate brokers in residential transactions. Owners are permitted to post one "For Sale," "For Rent" or "For Lease" signs, signs advertising garage sales and yard sales, and signs endorsing political candidates, ballot issues and similar matters which are the subject of upcoming elections or are approved in writing by the Board or its designee; provided, that such signs otherwise conform to the requirements of this Paragraph and are removed promptly following the events to which they pertain.

**3.15 Leasing.** Homes may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant provide written acknowledgment of receipt of a copy of the Declaration, Bylaws and Rules and Regulations of the Association and comply with same. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of non-compliance, the Board in addition to any other remedies available to it, may levy sanctions against the Owner and the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owners property. Further, no Home shall be used or rented for transient, hotel or motel purposes. The Managing Agent for the Subdivision must be notified of any such Lease; including the tenant's name and the Owner-lessor's new address and shall be furnished a copy of such lease and receipt of governing documents to assure compliance with this Paragraph. Owner shall continue to have financial liability for all acts or omissions of their tenant.

**3.16 Complaints.** Complaints regarding the management of the Subdivision or regarding actions of other Owners shall be made in writing to the Managing Agent or the Board of Directors. No Owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the Managing Agent or the Association.

**3.17 Landscaping and Exterior Maintenance.** All landscaping located within Owner's yards will be properly maintained at all times by the Lot Owner. Each Lot Owner will keep all shrubs, trees, 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. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot including set back areas and Common Areas, (ii) Public Right-of Way areas between sidewalks and the street curb in front of Owner's property, neatly trimmed and mowed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material.

**3.18 Window Coverings.** Appropriate window covering must be installed by each Owner on all windows of such Owner's Home and must be so maintained thereon at all times. Foil, sheets, blankets, newspapers and cardboard are prohibited. Appropriate window coverings include curtains, drapes and blinds.

**3.19 Exterior Holiday Decorations.** Lights or decorations may be erected on the exterior of Homes 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 sightseers. 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 1<sup>st</sup> of any year. For other holidays, decorations or lights may not be displayed more than thirty (30) days in advance of the holiday.

**3.20 Animals.** No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes. All household pets must be restrained on a leash or otherwise under the direct control of an individual when in Willow Trace. All city and county animal control ordinances shall be complied with. No animal will be allowed to run loose, 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. The Association will turn all animal issues over to the proper city departments for necessary action including the removal of animals from the property if necessary. The Association will work with the appropriate city department and in accordance with all city ordinances in

the enforcement of this provision. Owners must at all times and in all parts of the subdivision clean up after their pets.

**3.21 Towing Vehicles.** The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, camper shall, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the assessment lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessment.

**3.22 Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot.

**3.23 Disease and Insects.** No owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.24 Antennae, Satellite Dishes and Solar Collectors.** Except with the written permission of the Committee or as provided herein, no Owner may erect 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; provided, however, such DBS or MMDS antenna being less than one meter in diameter may be placed in the lease conspicuous location on the flat portion of roofs 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 Committee. 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 Committee to place such antennal structure in another location. Except with the written permission of the Committee, no solar collector panels may be placed on or around the residential structure. The installation of satellite dishes and antennae will be in accordance with FCC regulations and in accordance with the Rules and Regulations for Willow Trace.

**3.25 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon, or adjacent to, any Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; (ii) that which the Declarant or the Association may require for the operation and maintenance of Willow Trace.

**3.26 Party Walls.** Except as hereinafter provided, the rights and duties of Owners with respect to Party Walls between Lots and tracts shall be as follows: (i) the Owners of contiguous Lots or tracts who have a Party Wall shall both equally have the right to use such wall or fence, provided that such use by one (1) Owner does not interfere with the use and enjoyment of same by the other Owner, (ii) in the event that any Party Wall is damaged or destroyed through the act of an Owner or any of his Tenants, Lessees, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Tract any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking reimbursement and indemnity therefore from the persons causing such damage; (iii) in the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, lessees, agents, guests or family, it shall be the obligation of all Owners whose Lots or Tracts adjoin such Party Wall to rebuild and repair among the Owners in accordance with the frontage of their Lots or tracts on the Party Wall; (iv) notwithstanding anything to the contrary herein contained, there shall be no modification of any Party Wall without the

prior consent of all Owners of any interest therein, whether by way of easement or in fee; (v) in the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding; in the case of Party Walls between Common Areas and Lots or tracts, the Association shall be responsible for all maintenance thereof which is not a portion of the Common Area. The provisions of this subsection (p) shall not apply to any Party Wall which separates the interiors of two (2) Dwelling Units and the rights of the Owners of such Dwelling Units with respect to Party Walls shall be governed by plats and covenants, conditions and restrictions to be Recorded by the developer of the Dwelling Units.

**3.27 Perimeter Walls.** Perimeter walls shall be constructed by the Declarant, The Association shall be responsible for the exterior maintenance, repair, replacement, graffiti removal and upkeep. Lot owners shall be obligated to maintain the structural integrity of the perimeter walls and cannot alter the walls in any manner without the written approval of the Architectural Committee.

## ARTICLE 4

### Membership, Voting Rights in the Association

**4.1 Owners of Lots.** Every Owner (including the Declarant) of a Lot shall be a Member of the Association. Each such Owner (including the Declarant) shall have the following number of Memberships:

(a) **One Membership for each Lot owned by the Member.** No Owner, whether one or more persons, shall have more than one (1) Membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each Membership applicable to a Lot be cast for each Lot;

Each such membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable.

(b) **Declarant.** The Declarant shall be a member of the Association for so long as it owns any Lot.

(c) **Classes of Membership.** The Association shall have two classes of voting Memberships:

Class I. Class I Members shall be all Owners with the exception of the Declarant. Class I Members shall be entitled to one vote for each Membership.

Class II. Class II Member shall be the Declarant who shall be entitled to one (1) vote for each Membership.

**4.2 Right to Vote.** No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of said votes shall be counted and all said votes shall be deemed void.

**4.3 Membership Rights.** Each member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws or Willow Trace Rules and design guidelines as the same may be amended from time to time.

**4.4 Transfer of Class I Membership.** The rights and obligations of the owner of a Class I Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot as applicable, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage or deed of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot or parcel shall operate to transfer the Membership(s) appurtenant to said Lot of the new Owner thereof.

**4.5 Suspension of Voting Rights.** Any Member who fails to pay any assessment or other fees or moneys provided herein within thirty (30) days of the due date thereof, shall have all voting rights as provided herein suspended until such amounts plus any accrued interest, attorney's fees and/or collection costs are paid in full. The Board may suspend an Owner's voting rights for violations of the Declaration, Design Guidelines, and/or Rules and Regulations.

## **ARTICLE 5 Organization, Powers and Duties of the Association**

### **5.1 Organization.**

(a) The Association has been organized as a non profit corporation charged with the duties and empowered with the rights set forth herein and in the Articles of Incorporation. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the Bylaws. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

(b) In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the Bylaws.

(c) The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, acknowledge and record a certificate of identity stating the names of all the members of the then current Board and the then current Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Committee in favor of any person relying thereon in good faith.

(d) The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association and as otherwise provided by law.

(e) The initial Board shall be appointed by and serve at the pleasure of the Developer, until the closing of the sale of the last Lot in the Subdivision owned by the Developer. At the first meeting of the members after the termination of the Class II Membership the Board shall be elected by the Members as provided in the Bylaws.

**5.2 Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a non profit corporation, subject only to limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its



Bylaws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and general welfare of Owners.

(a) Any of the following actions by the Board shall require a majority vote or written assent of the members:

(1) Entering into a contract for the furnishings of goods or services for Common Area and/or Landscape Area or the Association for a term longer than three (3) years, with the exception of prepaid casualty or liability policies of not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured; and

(2) Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business; provided, that the Board may, without such vote, cause a member or officer to be reimbursed for approved expenses incurred in carrying on the business of the Association.

(3) Incurring indebtedness of any type in any amount greater than Five Thousand and no/100 Dollars (\$5,000).

(b) In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Common Areas and/or Landscape Areas, the Association shall have the power and authority to:

(1) Contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area and/or Landscape Areas and all Improvements located thereon;

(2) Obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Owners;

(3) Incur indebtedness not exceeding the amount specified in subsection (a) above;

(4) Contract and pay for, or otherwise provided for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;

(5) Contract and pay for, or otherwise provided for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and nonprofessional services as the Association deems necessary;

(6) Contract and pay for, or otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;

(7) Pay and discharge any and all lien from time to time placed or imposed upon any Common Area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

(8) Lease or contract for the use of land and improvements for recreation or other purposes to the extent the Association deems necessary; and

(9) Place and maintain upon Common Area and/or Landscape Area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

(c) In fulfilling any of its obligations or in exercising any of its rights with respect to the development construction, installation or acquisition of a capital improvement, the Association shall have the power and authority to:

(1) Contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;

(2) Obtain, maintain and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and owners, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;

(3) Incur indebtedness under terms and conditions as provided by this Article; and

(4) Contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.

(d) The Association shall exercise control over the Common Area and/or Landscape Area, for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof, unless approved by two-thirds (2/3) vote of the Members except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, hearing and gas lines or pipes and any and all equipment in connection with the foregoing.

(e) The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

(f) The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against all or any part of the Common Area any income of or assessed to the Association, and upon any personal property belonging to or assessed to the Association.

(g) The Association shall have the power and the authority "but not the duty" from time to time, in its own name, on its own behalf, and on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.

(h) The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations (Willow Trace) pertaining to: (i) the management, operation and use of the Common Areas (ii) minimum standards for any maintenance of Lots or (iii) the health, safety or welfare of the Owners and residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Willow Trace Rules, the provisions of this Declaration shall prevail. The Willow Trace Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

**5.3 Liability of Members of Board.** No member of the Board shall be personally liable to any Owner, to any other person, including Developer, for any error or omission of the Association, its representatives and employees, or the manager; provided however, that such member has, with the actual knowledge possessed by him, acted in good faith.

#### 5.4 Duties and obligations of the Association.

(a) The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform all matters set out in this Section, for the benefit of the Owners and for the maintenance and improvement of the Subdivision.

(b) The Association shall accept from the Developer the Common Areas and maintenance responsibilities in all Landscape Areas which shall be deemed transferred to it

(c) The Association shall maintain, or provide for the maintenance of, the Common Areas, the Landscape Areas and all Improvements thereon, and the perimeter Wall (except for damage caused to the Perimeter Wall by the negligence of Owners which shall be paid by the Owners) except for areas within the Subdivision which are maintained by the City. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs, trees, etc.) on Common Area and Landscape Area and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

(d) The Association may employ the services of a professional management company to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association and the Association may delegate to the management company any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Developer) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on written notice of ninety (90) days or less.

(e) The Association shall obtain and maintain in force such policies of insurance as the Board may determine, including at least the following:

(1) Fidelity Bond: Except as provided in the Bylaws with respect to bonds provided by a professional management company, the Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in any amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall have those coverage's and shall contain those other terms and conditions specified in the Bylaws. The cost of such fidelity bond (if not provided by a professional management company) shall constitute a common expense of the Subdivision.

(2) Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damages suffered by the Public of any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall have those coverage's and shall contain those other terms and conditions, including a requirement of written notice to first mortgages of Lots prior to cancellation or major change, specified in the Bylaws.

(f) The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

(g) The Association may take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions.

**ARTICLE 6**  
**Funds, Assessments and Delinquency**

**6.1 Creation of Lien and Personal Obligation for Assessment.** Developer for each Lot owned by it hereby agrees to pay, and each owner of any Lot by the acceptance of a deed or contract of sale therefore, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- (a) Maintenance assessments;
- (b) Noncompliance assessments;
- (c) Assessments for capital improvements; and
- (d) All other fees or other moneys due to the Association from such Owner.

The maintenance assessments, noncompliance assessment and assessment for capital improvements, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each such assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them. The Association shall have the right to adopt rules and regulations setting forth procedures for the purpose of making and collecting the assessments provided herein.

**6.2 Operating and Reserve Fund.**

(a) There shall be an operating fund, into which the Association shall deposit all monies paid to it and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

(b) There shall be a reserve fund for major repairs and replacements and for capital improvements to be built or acquired.

**6.3 Maintenance and Assessment.**

(a) Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all owners in shares, with each Lot representing one (1) share. The initial maintenance assessment shall be established by the Developer, and all or a portion of this amount shall be collected from each Owner upon closing of his purchase of a home.

(b) If, at any time and from time to time during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection (a), if approved by two-thirds (2/3) vote of the members, and approved by Developer so long as Developer owns any Lots.

(c) Maintenance assessments shall be due and payable to the Association when Levied or in such installments during the year, and on such due dates as the Board shall designate.

(d) The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the

Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of the Members.

(e) From and after the December 31 immediately following the conveyance of the first Lot by Developer, the maximum maintenance assessment may be increased each year not more than an increase equal to twenty percent (20%) increase from the previous year without a vote of two thirds (2/3) of the Members and approval of the Developer so long as Developer owns any Lots in the Subdivision. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.

**6.4 Noncompliance Assessment.** The Association shall levy a noncompliance assessment against any Owner or Owners as a result of whose acts, or failure or refusal to act, or otherwise comply with the Subdivision Restrictions, or the Willow Trace Rules, monies were expended from the operating fund by the Association. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied, or in such installments as the Association shall designate. Prior to the levy of a noncompliance assessment, the Board shall hold a hearing to determine the validity and the amount of the assessment upon at least fifteen (15) days notice to the Owner to be assessed at which hearing such Owner shall be given the opportunity to be heard.

**6.5 Assessments for Capital Improvements.** The Association may also levy in any year an assessment for paying or recovering, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by a two-thirds (2/3) vote of the voting powers of each class of members, and the consent of the Developer so long as the Developer owns any Lots in the Subdivision, which assessment shall be assessed to Owners in the manner provided for in Section 6.3.

**6.6 Reserves as Trust Funds.** Reserve funds or major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of the members.

**6.7 Delinquency.** Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against who it is assessed. Any assessment provided for this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date: (a) the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, but not to exceed twenty percent (20%); (b) the Association may, at its option, bring an action against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot; (c) there shall be added the amount of such assessment the late charges and costs of preparing and filing the complaint in such action; and (d) in the event a judgment is obtained, such judgment shall include interest at rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

**6.8 Notice of Lien.** No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest

charges, costs and attorney's fees recoverable by an action at law) and the name and address of the Association.

**6.9 Foreclosure Sale.** Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**6.10 Curing a Default.** Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing and recording such release, together with the payment of such other costs, interest or fees as shall have been incurred.

**6.11 Cumulative Remedies.** The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including, (i) bringing a suit to recover a money judgment for unpaid assessment, as above provided and/or (ii) notifying the applicable mortgage company and/or Credit Bureau, (iii) and refer the collection of the assessment to a collection agency.

**6.12 Certificate of Payment.** The Association shall, upon demand, furnish to any owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessment on a specified Lot have been paid, the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**6.13 Commencement of Annual Assessment.** Except for Homes constructed on Lots that are owned by the Declarant, the maintenance assessments provided for in this Article shall commence as to each Lot upon closing. The first such annual assessment shall be prorated for each Lot for the period from commencement as provided in this section to the start of the next fiscal year following such commencement. In the event that the Association has inadequate revenues from maintenance assessments to maintain the Common Area and the Landscape Area, the Developer shall meet this shortfall; this obligation shall cease after the closing of the sale of the last Lot owned by the Developer. The Developer may choose between paying assessments for each Lot owned or meeting the shortfall.

**6.14 Transfer Fee.** Each person or entity other than Developer who purchases a Lot shall pay to the managing agent immediately upon becoming the Owner of the Lot a Transfer Fee.

**6.15 Declarant's Obligation for Assessments.** During the Class II control period, Declarant may annually elect either to pay regular assessments on its unsold units, or to pay the difference between the amount of assessments collected on all other units subject to assessments and the amount of actual expenditures by the Association during the fiscal year.

## ARTICLE 7 Duties and Responsibilities of Owners

**7.1 Owner's Responsibility to Repair and Insure.** Each Owner shall be responsible for the maintenance and repair of his Home, his Lot and any Improvements and fixtures, and his landscaping, other than landscaping within the Common Area or the Landscape Area, which shall be maintained by the Association. Each Owner shall keep such owner's Home insured against hazards included under standard policies for fire and extended coverage sufficient to cover the replacement cost of the home, and for personal liability, including personal injury and death and property damage, in amounts and under terms which are standard in the Albuquerque area.

## **7.2 Joint Maintenance by Owners.**

(a) Each wall which is built as part of the original construction of the Subdivision and placed on the dividing line between Lots shall constitute a party wall. Each part of the structure of a building which is shared by more than one dwelling is a common structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

(b) The cost of reasonable repair, maintenance and replacement of a party wall, common structure or joint utility shall be shared by the owners who make use of the wall in proportion to such use.

(c) Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes a party wall or common structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(d) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

**7.3 Observance of Subdivision Restrictions.** Each Owner shall comply with the Subdivision Restrictions and will cause and be responsible for Owner's family, agents, guest, contractors, employees and any person renting or leasing owner's dwelling to do likewise.

## **ARTICLE 8**

### **Construction and Architectural Control**

**8.1 Architectural Control Committee.** A committee to be known as the Architectural Control Committee will be established consisting of between three (3) and five (5) members.

(a) The members of the Committee will be appointed, terminated and/or replaced by the Declarant so long as there is Class II Membership. Thereafter the members of the Committee will be appointed, terminated and/or replaced by the Board of Directors. The members appointed to the Committee are Garret Price, Jennifer Lind, and Allen Melzo.

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

(c) The Committee will act by simple majority vote, and upon Board approval 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.

### **8.2 Construction of Improvements.**

(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement (the term Improvement is denied in Article I, and includes but is not limited to fencing and walls) of any nature; and before anyone shall re-roof, paint, texture, repaint or retexture (including re-stucco) the exterior surfaces of any Improvements, there shall be submitted to the Committee plans and specifications as follows:

(1) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc. together with a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surrounding Homes;

(2) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications; and

(3) No improvement of any kind, installations, roofing, exterior painting, landscaping, grading or drainage changes, or texturing (including re-stucco), shall ever be, or permitted to be, erected, constructed, installed placed or maintained on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefore shall have received written approval of the Committee. All such final plans shall include plot plans showing the location on the Lot of all improvements proposed to be constructed and/or installed, planted, placed or maintained on the lot and shall further include elevations, together with the proposed color schemes and textures for roofs and exteriors thereof, indicating the materials for same.

All proposed work shall comply with applicable City requirements and shall have any and all required City permits (or shall qualify for such permits, to the satisfaction of the Committee).

The Committee is authorized to charge not more than one hundred dollars (\$100.00) for review of plans and specifications. Payment of the required charge together with any delinquent assessments shall be a part of, and condition to, the submittal of plans and specifications for committee approval. Costs incurred in the hiring of services of a professional engineer or other consultant shall be the responsibility of the Owner.

(b) The Committee shall approve or disapprove within thirty (30) days after receipt thereof and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files.

In the event that the Committee shall fail to approve or disapprove the plans and specifications within thirty (30) days after receipt thereof by the Committee, then such plans and specifications shall be deemed disapproved, and the submitting Owner shall have a right of immediate appeal to the Board, which shall convene a special meeting to consider such plans and specifications.

The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee finds that the plans and specifications are not in accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the prevailing architectural and design features and concepts of the Subdivision, or surrounding homes, or if the plans and specifications are incomplete.

(c) Any Improvement or work completed or done without compliance with the procedure set forth in this Article shall be deemed nevertheless to have been done in compliance with such procedure if no action has been commenced to enforce the provisions of this Article against such improvement or work within one (1) year of its completion; provided that the foregoing limitations period shall not apply in the case of any structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the Restrictions.

(c) No Improvements including excavation or grading work or changes shall be performed within the Subdivision unless in compliance with the Site Plan and the Grading and Drainage Plan.

**8.3 Design Guidelines.** The Committee may from time to time adopt design guidelines for review and approval of Improvements. The Committee may grant variances from such design guidelines consistent with the Site Plan.

**8.4 Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Committee by any owner, and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Association, the Committee shall provide owner with an estoppel certificate



executed by an Officer of the Association and acknowledged, certifying with respect to any House owned by said owner, that as of the date thereof either (1) all Improvements and other work made or done upon or within said House by the Owner, otherwise, comply with this Declaration, or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) justify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrances shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between Developer, the Association, and all Owners and such purchaser, and mortgagee.

**8.5 Liability.** Neither the Committee, the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- (a) The approval of any plans, drawings, and specifications, whether or not defective,
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications,
- (c) The development or manner of development of any property within the Subdivision, or
- (d) The execution and recording of an estoppel certificate whether or not the facts therein are correct; provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Committee, Board, or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any proposal submitted to it.

## **ARTICLE 9**

### **Protection of Security Interests**

**9.1 Application of Assessment to Mortgages.** The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the County Clerk or other appropriate real estate recorder.

**9.2 Right to Notice.** The Association shall provide all Eligible Mortgagees with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due the Association by the Owner of a Lot which is subject to a first mortgage held, by any Eligible Mortgagees and which delinquency remains uncured for a period of sixty (60) days or more.

**9.3 Limitation of Enforcement Against Mortgagee.** No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restrictions against an owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such owner, but the Subdivision Restrictions shall be effective against any owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

**9.4 Rights of Mortgagee to Information.** A mortgagee shall, upon written request, be entitled to inspect the Declaration, Bylaws, Rules and Regulations, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time financial statement for the immediately preceding fiscal year, free of charge and shall receive notice of meetings and the same basis as member.

**9.5 Application of Subdivision Restrictions.** Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.

**9.6 Collection of Assessment.** A mortgagee shall be under no obligation to collect assessments.

## **ARTICLE 10 Limitation of Subdivision Restrictions on Developer**

**10.1 Limitation of Subdivision Restrictions on Developer.** Nothing in this Declaration shall be understood or construed to prevent Developer or its agents, employees, and contractors from:

(a) Doing on the properties whatever is reasonably necessary or advisable in connection with the completion of the infrastructure and other development work; or

(b) Erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices or its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or

(c) Maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any one or more Homes.

**10.2 Use of Subdivision Name.** Developer may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision and Association. Consent is hereby given to Developer and Developer's assigns to use such names in the name of a corporation and upon request of Developer, the Association agrees to execute a written consent authorizing Developer to use the same or similar name, which consent may be filed with the New Mexico Regulation Commission or similar agencies in New Mexico and other States.

**10.3 Developer Architectural Control Exemption.** Improvements by Developer to the Subdivision do not require approval of the Committee.

**10.4 No Amendment or Repeal.** The provisions of this Article may not be amended or repealed without the consent of Developer.

## **ARTICLE 11 Miscellaneous Provisions**

**11.1 Amendment or Repeal; Duration.**

(a) These Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed by occurrence of both of the following:

(1) The approval by seventy-five percent (75%) vote or written consent of the voting power of the membership in the Association and the consent of the Developer so long as the Developer owns any Lots within the Subdivision; and

(2) The recordation of a certificate of the Secretary the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendments or repealer have been approved by the required vote or consent of the owners, and if necessary, by the consent of the Developer.

(b) Developer may amend, modify, or terminate these Restrictions by a recorded instrument of amendment or correction:

(1) At any time during which Developer is the owner of at least one (1) Lot in the property within the Subdivision; or

(2) At any other times, where the only effect of such amendment is to correct manifest errors, omissions or inconsistencies.

(c) The Declaration shall be effective upon the date of Recording hereof and, as amended from time to time, shall continue to full force and effect until December 31, 2035. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by a quorum of the Members casting two-thirds (2/3) of the total votes cast at an election held for such purpose in person or by proxy within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may likewise be terminated at any time if two thirds (2/3) of the quorum of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Bernalillo County, New Mexico, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration and the covenants contained herein shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### **11.2 Enforcement; Non-Waiver; No Forfeiture.**

(a) Except to the extent otherwise expressly provided herein, the Association or any Owner or Owners shall have the right to enforce any of the provisions now or hereafter imposed by the Subdivision Restrictions upon other Owners, or upon any property with the Subdivision.

(b) Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any of the provisions now or hereafter imposed by the Subdivision Restrictions upon the Association.

(c) Every material violation of all or part of any restriction, condition, or covenant of the Subdivision Restrictions is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether the relief sought is for negative or affirmation action, by the Association or by an Owner or Owners, as provided in this Section. Any provisions to the contrary notwithstanding, only the Association or its duly authorized agents may enforce by self-help (and then only to the extent that self-help is available by law) any limitation, restriction, covenant, condition, or obligation herein set forth.

(d) Each remedy provided for in this Subdivision Restrictions is cumulative and not exclusive.

(e) the failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Subdivision Restrictions shall not constitute a waiver of any right to enforce subsequently any such provision or any other provision of the Subdivision Restrictions.

(f) No breach of any of the provisions of the Subdivision Restrictions shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

(g) Reasonable attorneys' fees and costs may be awarded in any action brought to enforce the provisions of the Subdivision Restrictions.

### **11.3 Construction, Compliance with Laws, Etc.**

SANDOVAL COUNTY  
200432788

Book-407 Page- 32788  
19 of 23  
10/15/2004 01:20:51 PM

(a) All of the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision.

(b) No provision of the Subdivision Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

(c) Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provisions, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural, the singular, unless the context requires contrary, and the masculine, feminine and neuter, as the context requires.

(e) All titles used in the Subdivision Restrictions, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not affect the content of these such Subdivision Restrictions.

#### **11.4 Lot of Splitting; Consolidation.**

(a) No Lot within the Subdivision shall be split, nor shall two or more lots within the Subdivision be consolidated into one Lot, unless the Board shall have given its written consent.

(b) Nothing contained in this Section shall apply to the splitting or consolidation of any Lots by Developer.

(c) The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to maintain consistency in the assessment and voting rights of such Lot or Lots.

#### **11.5 Obligations of Owners; Avoidance; Termination.**

(a) No owner, through the abandonment of the Owner's Lot, may avoid the burdens or obligations imposed on such owner by the Subdivision Restrictions.

(b) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions, and no person, after the termination of his status as an owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivision Restrictions following the date of such termination.

**11.6 No Partition or Severance of Interests.** There shall be no partition or severance of any Lot from or within the Subdivision, and the Developer, Board, Association and Owners shall not seek to partition or sever any part of a Lot in the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No owner shall attempt to sever his Lot from its interest in the Association.

**11.7 Notices; Documents; Delivery.** Any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

**If to an Owner;** at any Home within the Subdivision owned by the Owner or at such other address given by Owner to the Association, in writing.

**If to Developer or to the Association:**

Willow Trace HOA  
c/o Canyon Gate Real Estate Services  
P.O. Box 93488  
Albuquerque, NM 87199-3488

Any such address may be changed from time to time by any Owner or by Developer by notice in writing, delivered to the Association, or by the Association, by notice in writing, delivered to all Owners.

**11.8 Ownership of Property.** All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damages to the Subdivision, and any right or interest in any such property, shall belong beneficially to the Owners in proportion to each Owner's share of the maintenance assessment, and no assessment or the proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions unless and until there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any Home, and any sale, transfer, or conveyance of the beneficial interest of the fee of any Home shall operate to transfer the owner's rights in such property without the requirement of any express reference thereto.

**11.9 Transfer of Common Area.** Upon recording of this Declaration, Developer shall be deemed to have transferred and conveyed to the Association, and the Association shall accept, the Common Areas. The Common Areas may 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) Such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or Improvements thereon as may be reserved to Developer or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;
- (d) 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
- (e) Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which relates to the construction by Developer and its agents of the subdivision improvements for the Subdivision, such as curbs, gutters, streets and utility lines, or which would not materially and actually prejudice owners in their use and enjoyment of such property.

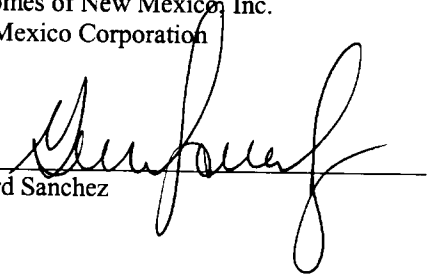
**11.10 Interpretation of the Declaration.** The Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. The Association's construction or interpretation of the provisions hereof by the Declaration and provisions hereof.

**11.11 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

SANDOVAL COUNTY  
200432788  
Book-407 Page- 32788  
22 of 23  
10/15/2004 01:20:51 PM

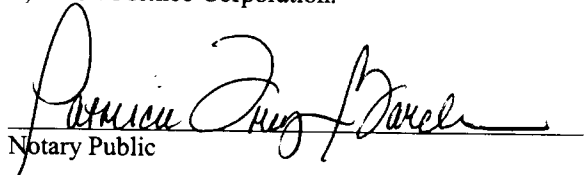
IN WITNESS WHEREOF, Developer has executed this Declaration the day and year first above written.

Pulte Homes of New Mexico, Inc.  
A New Mexico Corporation

By:   
Gerard Sanchez

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

This instrument was acknowledged before me on this 13 day of October, 2004 by Gerard Sanchez, Pulte Homes of New Mexico, Inc., a New Mexico Corporation.

  
Notary Public

My Commission Expires:

10.12.2005

SANDOVAL COUNTY  
200432788  
Book-407 Page- 32788  
23 of 23  
10/15/2004 01:20:51 PM