

**FIRST AMENDED AND RESTATED BY-LAWS  
OF  
ANDALUCIA HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE  
I.  
INTRODUCTORY PROVISIONS**

1.1. **Applicability.** These By-Laws provide for the governance Andaluca Homeowners Association, Inc. a New Mexico nonprofit corporation (herein “the Association”), with respect to Andaluca At La Luz, a planned residential community located in the City of Albuquerque, County of Bernalillo, State of New Mexico, created by the recording of the Declaration to which these By-laws pertain (“Declaration”). These Bylaws shall pertain to that certain addition as shown on the Plat (the “Subdivision”), It is contemplated that there will be additional phases of Andaluca At La Luz, and that upon the filing of a Supplemental Declaration, the “Subdivision” as used herein may include the additions shown on plats for those phases as well and may include all other real properties which may become subject to the Declaration.

1.2. **Definitions.**

1.2.1. “Declaration” shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for Andaluca at La Luz, an addition to the City of Albuquerque, New Mexico, To Run With the Land, including its exhibits, as the same may be amended from time to time, and shall include any Supplemental Declaration.

1.2.2. Capitalized terms used herein without definition shall have the defined meanings specified for such terms set out in the Declaration.

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

1.4. **Office.** The principal office of the Subdivision, the Association, and the Board shall be located at 8300 Carmel Drive NE, Suite 401, Albuquerque, New Mexico 87112, or at such other place as may be designated from time to time by the Board.

**ARTICLE  
II.  
THE ASSOCIATION AND ITS MEMBERS**

2.1. **Composition.** The Association has been organized as a nonprofit corporation upon the filing of the Articles with the New Mexico Public Regulation Commission as provided by law. The Association shall have the responsibility of administering and managing the Subdivision, collecting assessments, and performing all of the other acts to be performed by the Association pursuant to the Declaration and Articles. The foregoing responsibilities shall be performed by the Board or its Managing Agent as more particularly set forth in these By-Laws.

2.2. **Membership.** Every person or entity who or which is a record Owner of a fee-simple interest in any Lot, as more particularly described in the Articles, shall be a Member of the Association. The rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress), may be suspended by the Board for any period during which certain delinquencies shall continue, as provided in the Articles. No Owner shall have more than one membership for each Lot owned by such Owner, but the Declarant shall be entitled twenty-five (25) votes for each lot owned by it until its Class B membership is converted to a Class A membership, as provided in the Articles. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

2.3. **Classes of Membership and Voting Rights.** The Association shall have two classes of voting membership, as provided in the Articles:

2.3.1. **Class A Members.** Class A Members shall be all Members, with the exception of Declarant as provided below. On all matters to be voted upon, Class A Members shall be entitled to one (1) vote for each Lot. When more than one person or entity holds such interest in a Lot, all such persons or entities shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. The person who shall be entitled to cast the vote of such Lot shall be the person named in a certificate executed by all of the Owners of such Lot and filed with the Secretary or, in the absence of such a named person, any person owning an interest in such Lot who is present at a meeting of Members. Such certificate shall be valid until revoked in writing by the Owners of such Lot, except that the signature of the person whose authority is revoked shall not be required. If no such certificate is on file with the Secretary, and if more than one person owning such Lot is present at a meeting of Members, then such vote shall be cast by any one of the multiple owners, provided that such vote shall be disregarded if another of such Owners promptly protests to the person presiding over the meeting.

2.3.2. **Class B Member.** The Class B Member shall be Declarant. As provided in the Articles, on all matters to be voted upon, the Class B Member shall be entitled to twenty-five (25) votes for each Lot in which it holds the interest required for membership as provided in Section 2.2 of this Article II. The Class B membership shall cease and become converted to Class A membership when required pursuant to the Articles.

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

2.3.4. **Election of Directors.** At each election for Board members one Owner of each Lot shall be entitled to cast for each vacancy to be filled at such election one (1) vote for each Lot owned by such Owner, as provided in the Declaration and the Articles, with the

exception of the Class B Member who shall be entitled to cast for each vacancy to be filled twenty-five (25) votes for each Lot owned by the Class B Member. Board members shall be elected by secret ballot. Those candidates for election receiving the greatest number of votes cast in such election shall be elected. No votes allocated to a Lot owned by the Association may be cast.

2.4. **Annual Meetings.** The annual meetings of the Association shall be held at 7:00 p.m., on the first Monday of August of each year, beginning in the year 2006, unless such date shall occur on a holiday, in which event the meeting shall be held on the succeeding Monday. At such annual meetings the Board shall be elected by ballot of the Members in accordance with the requirements of Section 3.3 of these By-Laws, and such other business as may properly come before the meeting may be transacted.

2.5. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Owners as may be designated by the Board.

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

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

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

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

2.10. **Proxies.** A vote may be cast in person or by proxy at all meetings of Members. Proxies shall be duly executed in writing, shall be valid only for the particular meeting(s) designated therein, and must be filed with the Secretary at or before the appointed time of the meeting(s). If a Lot is owned by more than one person, any proxy to be valid must be signed by the person indicated in the Certificate as the voting owner or by all of the

Owners of such Lot. Such proxy may be granted by any Lot Owner only in favor of another Member, a holder of a mortgage on a Lot, or Declarant. All proxies shall be revocable, but shall be deemed revoked only upon actual receipt by the person presiding over the meeting of written notice of revocation from any one or more of the Owner(s) granting such proxy. No proxy shall be valid for a period in excess of one (1) year after the execution thereof. A proxy is void if it is not dated or purports to be revocable without notice, or if the Owner(s) granting such proxy convey(s) the Lot to which the vote pertains.

2.11. **Quorum.** Except as otherwise provided in the Articles or in the Declaration, the presence of Members at the meeting of Members, in person or by proxy, entitled to cast fifteen percent (15%) of the votes of each class of membership shall constitute a quorum. A quorum once attained continues until adjournment despite withdrawal of enough Members to leave less than a quorum. The action of members entitled to cast a majority of the votes present in person or by proxy at a meeting at which a quorum is present will be the act of the Members unless a greater vote or class voting is required by law, the Declaration, the Articles, or these By-Laws.

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

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

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

**ARTICLE  
III.  
BOARD OF DIRECTORS**

3.1. **Number and Qualifications.** The affairs of the Association shall be managed by a Board of Directors (“Board”). The Board shall be composed of three (3) natural persons, who need not be residents of New Mexico or Members of the Association. The first Board will consist of the three (3) Directors named in the Articles. The first Board will serve until the first annual meeting of Members and thereafter until their successors have been duly nominated and elected, and have qualified and taken office. At the first meeting of Directors following their election by the Members at the first annual meeting of Members, they will by lot divide themselves into three (3) classes, one with a tenure of one (1) year; one with a tenure of two (2) years; and one with a tenure of three (3) years. The Board may, by a unanimous vote, and without amending these Bylaws, increase the number of Directors to not more than seven (7). Once increased, the number of Directors may not be decreased without an amendment to these Bylaws.

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

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

Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days’ written notice and without cause and without any penalty or other termination fee on no more than ninety (90) days’ written notice.

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

3.3.1. At the annual meetings of the Association, the election of members of the Board shall be held for the number of directorships to be filled at that annual meeting of Members. The terms of office of any Board member to be elected shall be fixed at three (3) years. Each member of the Board shall hold office until the earlier to occur of (a) the election and taking of office of his or her successor or (b) his or her death, adjudication of incompetence, removal, or resignation. A Board member may serve an unlimited number of terms and may succeed himself or herself.

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

a. At the meeting where Directors are to be elected, nominations of persons to stand for election shall be received from the floor. Each Member present at the meeting may nominate one additional person.

b. After the close of nominations from the floor, the ballots shall be completed and submitted to the Secretary in envelopes provided by the Secretary, identifying the Member whose vote is enclosed by name and Lot number, identifying any proxy holder casting such Member's vote, and signed by such Member or by the proxy holder, if applicable. The Secretary shall collect all such envelopes and examine them to verify that not more than one ballot is submitted for each Lot, that the Member's right to vote is not then suspended as provided herein, and that each proxy vote is submitted by an authorized proxy holder. Any disqualified ballots shall immediately be returned, in their envelopes, to the person(s) submitting them, and persons submitting disqualified ballots may replace them with properly qualified ballots at any time prior to the completion of counting of the ballots. The Secretary shall then remove the qualified ballots from the envelopes, without examination. The qualified ballots shall promptly be submitted to be counted by a committee designated by the President, composed of two (2) or more Members who are not Directors, officers, candidates for election.

3.4. **Persons Receiving Largest Number of Votes Will be Elected.** The persons receiving the largest number of votes will be elected as Directors, and the announcement of the elected Directors will be made at the meeting. The ballots may be destroyed after announcement of the results unless a review of the procedure is demanded by a majority of the Members present in person or by proxy at that annual meeting of Members.

3.5. **Removal or Resignation of Directors.**

3.5.1. Any one or more of the Directors may be removed with or without cause by a two-thirds (2/3) majority vote of the Members entitled to vote at a special meeting of Members called for that purpose. A successor Director shall be elected to fill the vacancy thus created for the remainder of the term of the Director being replaced at the special meeting of Members which removed the Director or at a special meeting set promptly after the occurrence of such vacancy. Successors are elected by a vote conducted at the special meeting in the manner otherwise provided for election of directors. In case of multiple vacancies, the person receiving the greatest number of votes shall be elected for the longest term.

3.5.2. A special meeting to remove a director may be called by a writing signed by the Owner or Owners of not less than thirty percent (30%) of the aggregate percentage voting interests of the Lots in the Subdivision, and that writing shall be given to the Secretary. Any Director whose removal has been proposed by such an Owner or Owners shall be given at least twenty (20) days' written notice by the Secretary of the time, place, and purpose of a special meeting of Members and shall be given an opportunity to be heard at the meeting.

3.5.3. A Director may resign at any time and shall be deemed to have resigned upon failure to attend two (2) consecutive regular meetings of the Board.

3.6. **Vacancies.** Except with respect to vacancies caused by the removal of a Director by a vote of the Owners as set forth in Section 3.5 above, all vacancies in the Board shall be filled by a vote of a majority of the remaining Directors

3.7. **Organizational Meeting.** The first meeting of the Board following each annual meeting of the Association (herein referred to as the “Organizational Meeting”) shall be held within ten (10) days thereafter at such time and place fixed by the President (even if he is the outgoing President) at the meeting at which such Board is elected. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board is present at such meeting. The officers of the Association shall be elected at the Organizational Meeting of the Board.

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

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

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

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

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

3.13. **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Such minute book shall be kept at the principal office of the Association and may be examined at any time by any Owner who may make copies of any entries therein. The Secretary shall, upon request of any Owner, for a reasonable charge, supply such Owner with copies of such minutes as the Owner designates, certified by the Secretary as being true and correct. The then current edition of *Robert's Rules of Order* shall govern the conduct of the meetings of the Board when not in conflict with the Declaration, these By-Laws, or the Articles.

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

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

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

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

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

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

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



such instance such injury or damage has been caused by the willful misconduct or recklessness of the Association or the Board;

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

3.17.3. Shall not be liable in contract to an Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument, or transaction entered into by them on behalf of the Board or the Association in the performance of the Directors' duties;

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

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

3.17.6. Shall have no personal liability arising out of the use, misuse, or condition of any Common Facility, or which might in any other way be assessed against or imputed to the Directors as a result of or by virtue of their performance or non-performance of their duties, except for the Directors' own willful misconduct or gross negligence.

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

**ARTICLE  
IV.  
OFFICERS**

4.1. **Officers.** The officers of the Association shall be a President and a Vice President, both of whom shall be Directors, a Secretary, and a Treasurer. One person may simultaneously hold two (2) or more of the offices enumerated in this Section 4.1, except that the President shall not simultaneously hold any other office.

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

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

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

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

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

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

4.7. **Vice President.** In the absence or disability of the President, the Vice President (or Vice Presidents, in order of their rank as fixed by the Board, or if not ranked, the

Vice President so designated by the Board, if any) shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice President or Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or these By-Laws.

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

The Secretary shall keep, or cause to be kept, at the principal office of the Association, a register showing the names of the Members and their addresses and the names and addresses of their proxies, if any; the number of votes each Member or proxy is entitled to cast; and certificates of Owners of Lots owned by more than one person designating who is entitled to vote for such Lot.

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

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

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

## ARTICLE V. COMMITTEES

5.1 **Committees** Usual and ordinary work of the Board may be conducted by committees established in these Bylaws and by resolutions of the Board. Each committee shall have and exercise all the authority provided in these Bylaws or in the establishing resolution. All committees shall be governed the by voting and quorum provisions which apply to meetings of the Board. However, except as expressly provided herein, no committee

shall have the authority of the Board in reference to amending, altering or repealing the Bylaws; electing, appointing, or removing any committee member or any Director or officer of the Corporation; removing or appointing any manager of the Association, adopting a plan of merger or adopting a plan of consolidation with another Corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefore; adopting a plan for the distributing of the assets of the Corporation; or amending, altering or repealing any resolution of the Board which by its terms provided that it shall not be amended, altered, or repealed by a committee, except that the Board shall have no power to bind the Rio Estates Executive Committee for matters committed to the authority of that Committee. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual director, of any responsibility imposed upon it, him, or her by law. Persons who are not members of the Board may serve in a non-voting capacity on Board Committees. The Committees shall report the actions of the committee since the previous Board meeting to a Director designated to act as a liaison to the committee.

**5.2 Architectural Review Committee.** There shall be an Architectural Review Committee which shall perform all of the functions and shall assume all of the powers granted to that committee by the Declaration. The Architectural Control Committee shall be appointed by the Board. The Chairman of the Committee and the other members may, but need not, be Board members. The Board shall appoint the Chairman and the two or more other members of the Architectural Control Committee prior to each Annual Meeting of Members to serve from the close of that annual meeting until the close of the next annual meeting of Members, and such appointments shall be announced at that annual meeting of Members. The Chairman and the other members of the first Architectural Control Committee shall serve from the date of their appointments until the close of the first annual meeting of Members.

**5.3 Rio Estates Executive Committee.** There shall be a standing committee consisting of a Chairperson and two additional members elected by the members who are owners of lots in the Rio Estates (Valle Paraiso) phase of the Subdivision. The members of this committee shall be elected at the time and in the same manner set out in these Bylaws for Board members except that only owners of Rio Estates Lots may vote for these members of the Rio Estates Executive Committee. Members shall be entitled to cast as many votes per Lot as their class of membership allows. Notwithstanding any other provision of these Bylaws, members of the committee shall have the power to appoint replacements to fill unexpired terms and to remove members by following the procedures for replacement or removal of Directors. The Chairman of the Rio Estates Executive Committee and the other members may, but need not, be Board members. If any Board member shall be a Rio Estates Lot owner, that member shall be an ex-officio member of the Rio Estates Executive Committee, regardless of whether elected specifically to that Committee. The Chairman of the Rio Estates Executive Committee shall be an ex-officio member of the Board. Such Ex-officio members shall not be entitled to vote unless otherwise entitled to vote under these Bylaws. The Rio Estates Executive Committee may delegate its responsibilities to a Manager in the same manner and to the same extent that such responsibilities may be delegated to a Manager by the Board. Unless necessitated by a direct conflict of interest, malfeasance or another similar good cause which the Rio Estates Executive Committee shall state in writing, the Manager for Rio Estates shall be the same person or entity as Manages the Association.

5.3.1. Purpose of Rio Estates Executive Committee. The Rio Estates Executive

Committee shall be responsible for decisions and for making decisions concerning all matters which are unique to Rio Estates (Valle Paraiso). The Committee shall be responsible for preparing budgets and making such assessments as are payable only by owners of Rio Estates Lots for Rio Estates Common Expenses, as those terms are defined by the Supplemental Declaration which included Rio Estates into the Subdivision. Budgets for Common Expenses of Rio Estates shall be prepared by or at the direction of the Rio Estates Executive Committee at the times and in the manner as budgets for Common Expenses of the Association as a whole are prepared by the Board of Directors. The directions and restrictions of these Bylaws with respect to expenditures and budgets shall apply to the expenditures and budgets prepared by the Rio Estates Executive Committee. Assessments for Common Expenses of Rio Estates shall be made only against owners of Rio Estates Lots, but shall be otherwise made and enforced by the Rio Estates Executive Committee as provided in these Bylaws for assessments by the Board.

5.3.2. All funds derived from assessments for Common Expenses of Rio Estates shall be segregated from the other funds of the Association.

5.3.3. Upon certain matters, the Rio Estates Executive Committee may bind the Board. Notwithstanding any provision in these Bylaws to the contrary, the actions of the Committee shall be the act of the Board, with all of the powers of the Board, and the Board may not alter or invalidate the acts of the Rio Estates Executive Committee with respect to the following:

- a. Creating and approving budgets for payment of Common Expenses of Rio Estates,
- b. Assessing owners of Rio Estates Lots for Common Expenses of Rio Estates and enforcing such assessments,
- c. Payment of Common Expenses of Rio Estates using funds obtained through assessments for Common Expenses of Rio Estates are utilized, and
- d. Providing for repairs, maintenance and replacement of Common Facilities of Rio Estates using funds obtained through assessments for Common Expenses of Rio Estates are utilized.
- e. Performing the functions of the Architectural Review Committee with respect to Rio Estates Lots.
- f. Any other matter affecting only Rio Estates Lots.

5.3.4. For all lots within Rio Estates, the Rio Estates Executive Committee or a subcommittee appointed by the Rio Estates Executive Committee, shall function as the Architectural Control Committee with all of the powers and obligations of the Architectural Review Committee created in the Master Declaration. The act of the Rio Estates Executive Committee with respect to the approval of plans, granting of variances, enforcement of covenants and all other duties otherwise performed by the Architectural Review Committee shall be the final act of the Board.

5.3.5 Any amendment to this Section 5.3 of these Bylaws, and its subparts, for which a vote of the Members is required shall only be effective if approved by two-thirds (2/3rds) of the votes (as allocated by this Declaration and the Articles and Bylaws) of Members who are

Owners of Rio Estates Lots and who are entitled to vote and who are voting in person or by proxy at a Special Meeting duly called for this purpose.

**ARTICLE  
VI.  
BUDGET; COMMON EXPENSES; ASSESSMENTS**

**6.1. Determination of Annual and Special Assessments Against Owners.**

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

**6.1.2. Preparation and Approval of Budget.**

a. At least ninety (90) days before the beginning of each fiscal year, the Board shall adopt a budget for the Association as a whole and separate budget for the Common Facilities of Rio Estates containing an estimate of the total amount considered necessary to pay the costs of maintenance, management, operation, repair, and replacement of the Common Facilities and of all areas and facilities proposed to become Common Facilities before title thereto is conveyed to the Association and all other costs, wages, materials, supplies, services, insurance premiums, legal, accounting, management, landscaping, and other services, and other expenses that may be declared to be Common Expenses by the Declaration, or a resolution of the Board, and which will be required during the ensuing fiscal year. Common Expenses for which assessments may be levied shall include any and all expenses, obligations, indemnities and other liabilities of the Association under the Easement Agreement, including, but not limited to, those described in Section 7.6 of these Bylaws and the corresponding paragraphs of the Declaration.

b. Each budget shall also include such reasonable amounts as the Board considers necessary to provide working capital, a general operating reserve, and reserves for contingencies, repairs, and replacements. Within thirty (30) days after adoption of the proposed budget, the Board shall send to each Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the annual assessment for Common Expenses payable by each Owner, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fifteen (15) nor more than thirty (30) days after mailing of the proposed budget. The Owners of Lots in Rio Estates shall also receive the budget for the Common Areas of Rio Estates. Only the Owners of Lots in Rio Estates shall be entitled to vote on the budget for Rio Estates. Unless the budget is rejected at the meeting by a two-thirds (2/3rds) vote of the Owners entitled to vote on the respective budgets, the budget shall be deemed ratified, whether or not a quorum is present. The Board shall cause a notice of the quarterly payment of the annual assessment for Common Expenses applicable to each Lot to be mailed to the respective Owner(s) within ten (10) business days after the budget is ratified. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. Such budget shall constitute the basis for determining each Lot's annual assessment for the Common Expenses.

6.1.3. **Annual and Special Assessments.** The total amount of estimated funds required from assessments for the operation of the Association set forth in the budget adopted

by the Board and ratified by the Members, shall be assessed against the Lots. In addition, special assessments levied by the Association, as provided in the Declaration, shall be assessed against the Lots. Both annual and special assessments shall constitute liens against the Lots and shall be fixed at a uniform rate for all Lots, except that the assessment on each such Lot and the payment thereof shall be deferred until 1) the sale of the Lot to its first retail purchaser (a purchaser other than a builder), or 2) the expiration of 90 days from the sale of the Lot to a builder, whichever occurs first. Each Owner shall be obligated to pay to the Board or the Managing Agent (as determined by the Board) such annual assessments in quarterly installments and such special assessments as determined by the Association. Within ninety (90) days after the end of each fiscal year, the Board shall supply to all Owners, and to each interested mortgagee requesting the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Association for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board, be placed in reserve accounts, or in a special account to be expended solely for the general welfare of the Owners, or shall be credited to the next quarterly installment(s) due from Owners under the current fiscal year's budget until exhausted. Any net shortage shall be assessed promptly by the Board against the Owners in proportion to their respective assessments and shall be payable in full with payment of the next quarterly assessment due.

**6.1.4. Reserves; Shortages and Further Assessments.** The Board shall build up and maintain reasonable reserves for working capital, operations, contingencies, repairs, and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Owner's annual or special assessment, the Board may at any time levy a further assessment, which shall be assessed against the Owners in proportion to their respective annual assessments, and which shall be payable in a lump sum or in installments as the Board may determine. The Board shall serve notice of any such further assessment on Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, or rejected at a special meeting of the Members by a two-thirds (2/3rds) vote of the Members entitled to vote, become effective with the first monthly payment which is due more than thirty (30) days after the delivery of such notice of further assessment. All Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessments shall be a lien as of the effective date thereof as determined by the Board.

**6.1.5. Initial Annual Assessments.**

a. Upon taking office, the initial Board designated in the Articles shall adopt the Budget, which forms the basis for the following annual assessment for fiscal year commencing January 1, 2006, without any requirement for the ratification thereof by the Owners. Assessments shall be levied and become a lien against the Lots and the obligations of the Owners during such period as provided in the Declaration. Until the fiscal year beginning January 1, 2008, the respective annual assessments for Common Expenses to be paid quarterly shall be as set forth in the Declaration. From and after January 1, 2006, the annual assessment for Common Expenses shall be adopted by the Board, subject to the ratification thereof by the Owners, as provided above. Declarant shall be responsible to pay

to the Association the shortfall in cash flow, if any, required to pay Common Expenses actually incurred, excluding reserves, as they come due for the time periods set out in the respective Declaration and Supplemental Declarations which brought the property within the Declaration.

b. No Lot shall be subject to an annual assessment until one of the following occurs: 1) the expiration of 90 days following the first sale of the Lot or 2) the sale of the Lot to its first retail purchaser (a purchaser other than a builder), whichever occurs first.

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

**6.1.7. Accounts.** Except as expressly provided herein all sums (other than funds from assessments for Common Expenses of Rio Estates) collected by the Board with respect to assessments against the Owners or from any other source may be commingled into one or several funds.

**6.2. Payment of Common Expenses.** Each Owner shall pay the annual assessments for Common Expenses and special assessments assessed by the Board and the Association, respectively, pursuant to the provisions of Section 5.1.3. hereof. No Owner may be exempted from liability for the payment of annual assessments of Common Expenses or special assessments by waiver of the use or enjoyment of any portion of the Subdivision or by abandonment of his, her, or its Lot. No Owner shall be liable for the payment of any part of the annual assessments for Common Expenses or special assessments assessed against his, her, or its Lot subsequent to the date of recordation of a conveyance by him to a subsequent Owner of his, her, or its fee-simple title to such Lot. Prior to or at the time of any such conveyance, all liens, unpaid charges, and assessments shall be paid in full and discharged. The purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments up to the time of recordation of such conveyance, without prejudice to the purchaser's right to recover from the selling Owner amounts paid by the purchaser therefor; provided, however, that pursuant to the terms of Section 5.5 below any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Owner, and such purchaser shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each bona fide first mortgagee who comes into possession of a Lot by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against such Lot which accrue prior to the time such mortgagee or purchaser at a foreclosure sale comes into possession or title thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges against all of the Lots including the mortgaged Lot.

**6.3. Collection of Assessments.** The Board, or the Managing Agent at the request of the Board, shall take prompt action to collect any assessments due from any Owner which remains unpaid for more than thirty (30) days from the due date. Any assessment, or



installment thereof, not paid within fifteen (15) days after its due date shall accrue a quarterly late charge in the amount of Twenty Dollars (\$20.00), or such other amount as may be established from time to time by the Board for that quarter and for each subsequent quarter that such delinquency remains unpaid.

Further, if the delinquent assessment and any late charges are not paid within thirty (30) days after the due date thereof, the assessment shall bear interest from the due date at the rate of ten per cent per annum and the Association may (i) bring an action at law against the Owner personally obligated to pay the same and/or (ii) foreclose the lien against the Lot, as provided in the Declaration.

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

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

## **ARTICLE VII. COMPLIANCE AND DEFAULT**

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

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

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

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

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

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

## **ARTICLE VIII. INSURANCE**

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

8.2. **Insurance Trustee.** The Board shall have the option, in its sole discretion, of naming as an insured, on behalf of the Association, an Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement. The duty of the Insurance Trustee shall be to receive, hold, or otherwise properly dispose of proceeds of insurance designated in the Insurance Trust Agreement in trust for the Association and Owners, and their mortgages, or other lien holders, as their interests may appear.

8.3. **Types and Amounts.** Commencing not later than the time of the conveyance of the first Lot to a person other than the Declarant, the Association shall, to the extent reasonably available at reasonable cost, obtain and maintain the types and amounts of insurance set forth below. Except as otherwise provided, the premiums for all such insurance policies shall be a Common Expense. The Association shall obtain and maintain:

### 8.3.1. Hazard Insurance.

a. Hazard insurance, with an endorsement for extended coverage, or such other fire and casualty insurance as the Board may determine provides equal or greater protection for the Unit Owners and their mortgagees, if any, in each case complying with the applicable requirements of Section 7.4 hereof. Such hazard insurance shall, if and to the extent reasonably available, provide coverage for the Common Facilities, including fixtures and building service equipment and common personal property and supplies belonging to the Association. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against. If such hazard insurance becomes unavailable in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this Section shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation (i.e., one hundred percent (100%) of current “replacement cost” exclusive of land, foundation, excavation, and other items normally excluded from coverage, but including all building service equipment), with an “agreed amount endorsement” or its equivalent, if available, or an “inflation guard endorsement,” if available, and construction code endorsements, if applicable, and to the extent required.

b. Such hazard insurance shall afford protection against at least the following:

(i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) all other perils which are customarily covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard “all risk” endorsement, where such is available at a reasonable premium.

c. Such hazard insurance policy may, at the option of the Association, contain a “deductible” provision in an amount to be determined by the Board but not to exceed Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount, whichever is less.

### 8.3.2. Comprehensive Liability Insurance.

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

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

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

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

### 8.3.3. **Fidelity Bond.**

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

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

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

d. Such fidelity bond or insurance shall also:

(1) name the Association as an obligee;

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

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

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

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

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

8.4.1. All policies shall be written with a company licensed to do business in the State of New Mexico and, for the hazard insurance policy described in Section 7.3.1. hereof, such company must hold a rating of Class VI or better by *Best's Insurance Reports* (or a rating of Class V, provided it has general policy holder's rating of at least "A"), or an equivalent rating by an equivalent rating bureau should *Best's Insurance Reports* cease to be issued.

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

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

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

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

c. Such policies cannot be canceled, invalidated, or suspended on account of the conduct of any officer or employee of the Association or of any Managing Agent without a prior demand in writing that the Association or any Managing Agent, as the case may be, cure the defect within a reasonable period of time;

d. Any "no other insurance" clause in such policies shall not prohibit any Owner from obtaining insurance on his, her, or its individual Lot provided such insurance policy conforms with the requirements of this Article VII;

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

f. Loss payable under each policy required pursuant to this Article VII shall be in favor of the Association or Insurance Trustee (if an Insurance Trustee has been

appointed by the Board pursuant to Section 7.2), as trustee for each Owner and each such owner's mortgagee(s) as their interests may appear. Policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), or shall otherwise be endorsed to fully protect all such mortgagees' interests;

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

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

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

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

k. Any Insurance Trust Agreement will be recognized.

#### **8.5. Owners' Insurance.**

8.5.1. Each Owner may obtain additional insurance at his, her, or its own expense; provided, however, that no Owner shall be entitled to exercise his, her, or its right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force.

8.5.2. Any Owner who obtains individual insurance policies covering any portion of the Subdivision, other than: (i) personal property belonging to such Owner; or (ii) the individual Dwelling Unit and/or Lot of such Owner, shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

8.5.3. The Board shall have the power to require all Owners except Declarant to carry such types of insurance on their Dwelling Units and/or Lots as the Board may reasonably require. The Board may not require that any such insurance be purchased from any one particular insurer or agent, and may not require that any particular person or entity be named as the insured under such insurance.

#### **8.6 Insurance pursuant to the Easement Agreement.**

(a) Insurance. As required by the Easement Agreement (which agreement is defined in the Declaration), the Association, its successors and assigns, will maintain or cause

to be maintained, liability insurance in the amount of not less than \$1,000,000.00 per occurrence combined single-limit for accidents or occurrences which cause bodily injury, death or property damage covering the 60' Easement and the Trail Connection Easement (as those easements are described in the Easement Agreement) as a result of the use of those easements. Without affecting the insurer's obligation to defend La Luz and or Bosque School, as between the City of Albuquerque's acknowledged responsibility and the liability insurance required by this provision, the City of Albuquerque's responsibility shall be primary and the insurance shall be secondary. The Association's insurance will name La Luz, Bosque School, and the City as additional insureds under such policy and will provide each of La Luz, Bosque School, and the City a certificate of such insurance reasonably acceptable to each of them. Any cancellation provision must provide that if the policy of insurance is canceled prior to its expiration date, materially changed, or will not be renewed, the issuing insurance carrier will mail prior written notice to La Luz Landowners Association at 1A Loop One NW, Albuquerque, NM 87120 and to the Bosque School at 4000 Learning Road NW Albuquerque, New Mexico 87120-2546 and to the City at City of Albuquerque, Risk Management Department, Attn. Risk Manager, P.O. Box 470, Albuquerque, New Mexico 87103. Any such prior written notice shall be sent by certified mail, return receipt requested at least ninety-days in advance of the proposed expiration, material change or non-renewal, if such a 90-day provision can be reasonably obtained. If such 90-day provision cannot be reasonably obtained, the Association shall obtain the longest advance notice provision reasonably available, but in no event less than thirty (30) days. All of the expenses of this paragraph shall be Common Expenses of the Association.

(b) Assessments by La Luz to purchase insurance. In the event of (i) dissolution of the Association without a successor or assign, or (ii) the Association's default in the payments required to maintain the liability insurance, and after the expiration of a thirty (30) day opportunity to cure after written notice from the La Luz Landowners Association, all of the enforcement rights of the Association with respect to the obligations under the Easement Agreement shall automatically be transferred to La Luz, and La Luz shall be entitled to enforce all of the charges and liens for the insurance premiums, costs, expenses and reasonable attorneys' fees upon the Lots subject to the Annual Assessment of the Association.

(c) Modification prohibited. Notwithstanding any provision of the Declaration or Bylaws to the contrary, no modification of this section 7.6 may be made without the prior written consent of the additional insureds set out in subparagraph (a), above if such entities, or successor entities, are in existence.

## **ARTICLE IX. AMENDMENTS**

9.1. **Amendments to By-Laws.** Except as otherwise provided in any one or more of these By-Laws, the Articles, or the Declaration, the provisions of these By-Laws may be amended, altered, or repealed, and/or new By-Laws adopted, by the Board of Directors with the affirmative vote of two-thirds (2/3rds) of the votes of Members entitled to vote, who are voting in person or by proxy at a Special Meeting.

9.2. **Approval of Mortgagees.** No amendment or modification of these By-Laws impairing or affecting the rights, priorities, remedies, or interests of a first mortgage holder

shall be adopted without the prior written consent of at least two-thirds (2/3rds) of the holders of first mortgage liens on Lots or Dwelling Units.

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

**ARTICLE  
X.  
GENERAL PROVISIONS**

10.1. **Notices.** Except where other forms of notice are specifically permitted by these Bylaws or the Declaration, all notices, demands, bills, statements, or other communications under the Declaration or hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, (i) if to an Owner, at the address which the Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Lot of such Owner, or (ii) if to the Association, the Board, or to the Managing Agent, at 8300 Carmel Drive NE, Suite 401, Albuquerque, New Mexico 87122, or at such other address as shall be designated by notice in writing to the Owners pursuant to this section. If a Lot is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

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

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

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

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

10.6. **Holder of Mortgage Entitled to Written Notification from Association of Default by Mortgage.** The holder of any recorded first mortgage on any Lot or Dwelling Unit is entitled to written notification from the Association of any default by the mortgagee of



such Lot or Dwelling Unit in the performance of such mortgagor's obligations to the Association which is not cured within thirty (30) days after notice thereof, provided that the holder of such recorded first mortgage previously shall have (a) notified the Association in writing of (i) the fact that it is the holder of such recorded first mortgage against a Lot or Dwelling Unit, (ii) the identity or description of such Lot or Dwelling Unit, and (iii) the name(s) of the mortgagor, as well as the name(s) of the Owner of the Lot or Dwelling Unit, if not the same name(s) as the mortgagor; (b) furnished to the Association a copy of the recorded first mortgage, the name and permanent address of such mortgage holder, and any other information or documents reasonably requested by the Secretary of the Association; and (c) requested the Association in writing to furnish to such mortgage holder written notification from the Association of any default by the named mortgagor of the identified or described Lot or Dwelling Unit in the performance of such mortgagor's obligations to the Association which is not cured within thirty (30) days after the notice thereof.

IN WITNESS WHEREOF, the Association has caused these Amended By-Laws to be executed by its principal officer on behalf of Andalusia Homeowners Association, Inc. on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ANDALUCIA HOMEOWNERS  
ASSOCIATION, INC.

By \_\_\_\_\_  
Scott Schiabor  
President

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Andalusia Homeowners Association, Inc., a New Mexico non-profit corporation; and

That the foregoing Amended By-Laws constitute the original By-Laws of that Association, as duly adopted by the unanimous consent of the Board of Directors in lieu of a meeting of the Board, effective on the \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
John Clarke  
Secretary