



Cabazon-Centex

Homeowners Association, Inc.

- Articles of Incorporation
- Bylaws
- Declaration of Covenants,
Conditions and Restrictions
- Forms

Articles of Incorporation

Cabazon-Centex
Homeowners Association, Inc.



OFFICE OF THE
PUBLIC REGULATION COMMISSION

CERTIFICATE OF INCORPORATION

OF

CABEZON-CENTEX HOMEOWNERS ASSOCIATION, INC.

2504496

The Public Regulation Commission certifies that the Articles of Incorporation, duly signed and verified pursuant to the provisions of the

NONPROFIT CORPORATION ACT


(53-8-1 to 53-8-99 NMSA 1978)

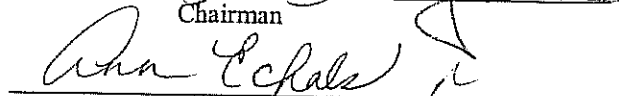
have been received by it & are found to conform to law.

Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Certificate of Incorporation & attaches hereto, a duplicate of the Articles of Incorporation.

Dated: OCTOBER 1, 2004

In testimony whereof, the Public Regulation of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to affixed at the City of Santa Fe.

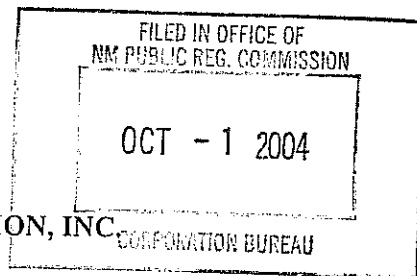

Chairman


Bureau Chief

ARTICLES OF INCORPORATION

OF

CABEZON-CENTEX HOMEOWNERS ASSOCIATION, INC.



The undersigned natural person, acting as incorporator of a corporation under the New Mexico Non Profit Corporation Act 53-8-1 to 53-8-99 NMSA 1978, adopts the following Articles of Incorporation for such corporation:

ARTICLE I

NAME

The name of the corporation is Cabezon-Centex Homeowners Association, Inc., hereinafter called the "Association".

ARTICLE II

TYPE OF CORPORATION

The Association is a non-profit corporation and has no capital stock.

ARTICLE III

DURATION

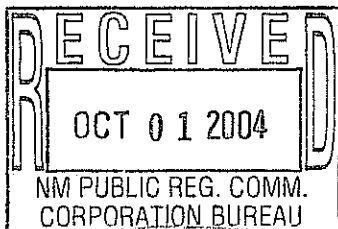
The period of duration is perpetual.

ARTICLE IV

PURPOSES AND POWERS

This Association does not contemplate pecuniary gain or profit to its members, and the purposes for which it is formed are to provide for preservation of the common area and common maintenance areas, if any, within and related to that certain real property known as Cabezon-Centex a subdivision in Sandoval County, New Mexico and to promote the health, safety and welfare of the residents within such properties and for these purposes the Association shall have the following powers:

(a) To pay all office and other expenses incident to the conduct of the business of the Association, including for example, but not by way of limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association;



(b) To purchase, receive, lease or otherwise own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(c) To borrow money, and with the assent of sixty-seven percent (67%) of each class of members to mortgage or pledge any or all of its real or personal property as security for money borrowed or debts incurred;

(d) To engage the services of agents, independent contractors or employees to manage, operate or perform all or any part of the affairs and business of the Association including, without limitation, the interpretation and enforcement of the Declaration, as defined herein; and

(e) To do and perform any and all lawful things and acts which in its discretion are necessary or desirable in carrying out any or all of the purposes for which the Association is formed, and pay the costs and/or expenses in connection therewith.

Further, the Association shall have and exercise any and all powers, rights and privileges which a corporation organized under the New Mexico Non Profit Corporation Act by law may now or hereafter have or exercise.

ARTICLE V

MEMBERSHIP

The owners of residential lots and areas annexed thereto as described on Exhibit "A" to the Declaration of Covenants, Conditions and Restrictions for Cabezon-Centex ("**Declaration**") to be recorded in the real property records of Sandoval County, shall be members of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any lot. When ownership of any lot is held by more than one person or by a legal entity which is not a natural person, all such owners shall be members of the Association, however, the voting rights of such members shall be limited to the number of votes set forth herein exercised as they among themselves shall determine.

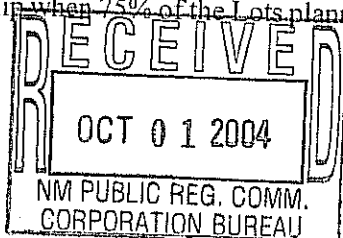
ARTICLE VI

VOTING RIGHTS

The Association shall have two classes of voting membership:

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

b. **Class B.** The Class B members shall be the Declarant who shall be entitled to three (3) votes for each unoccupied lot that Declarant owns. The Class B membership shall cease and be converted to Class A membership when 75% of the Lots planned for development have certificates of occupancy issued thereon and



are owned by Class "A" Members, or ten (10) years after conveyance of the first lot to a Class A member, whichever occurs earlier.

c. **Suspension.** All voting rights of an owner shall be suspended during any period in which such owner is delinquent in the payment of any assessment duly established by the Association or is otherwise in default hereunder or under the Bylaws or rules and regulations of the Association.

ARTICLE VII

AGENT AND OFFICES

Richard T. Bressan and 5120 Masthead NE, Albuquerque, New Mexico 87109, at such address constitute the initial agent and registered office, respectively, of the Association. The principal office of the Association is located at c/o Centex Homes, 5120 Masthead NE, Albuquerque, New Mexico 87109.

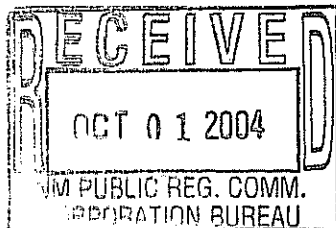
ARTICLE VIII

BOARD OF DIRECTORS

The names and addresses of the three (3) persons who are to serve as directors until the election or appointment of their successors are:

Richard T. Bressan	c/o Centex Homes 5120 Masthead NE Albuquerque, New Mexico 87109
Norman A. Gregory	c/o Centex Homes 5120 Masthead NE Albuquerque, New Mexico 87109
Joseph LaMendola	c/o Centex Homes 5120 Masthead NE Albuquerque, New Mexico 87109

At the first annual meeting the members shall elect one (1) director for a term of one (1) year, one (1) director for a term of two (2) years, and (1) director for a term of three (3) years; and at each annual meeting thereafter the members shall elect the director(s) for a term of three (3) years to fill each expiring term. At such time as the Board of Directors is expanded to more than three member 1) the Board of Directors shall always have an uneven number of members and 2) the rotation of the terms shall be adjusted so no more than one-third (1/3) of the Directors are elected in any one year.



ARTICLE IX

MERGERS AND CONSOLIDATIONS

To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have been approved by the votes of the holders of at least sixty-seven percent (67%) of the votes held by the entire membership.

ARTICLE X

AUTHORITY TO MORTGAGE

After same has been conveyed to the Association, any mortgage by the Association of the common area shall have been approved by the votes of the holders of at least sixty-seven percent (67%) of the votes held by the entire membership.

ARTICLE XI

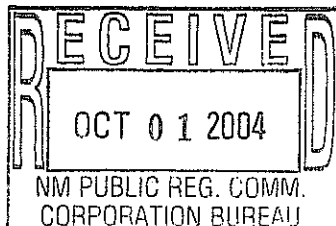
AUTHORITY TO DEDICATE

The Association shall have power to dedicate, sell or transfer all or any part of the common area (after same has been conveyed to it) to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by the votes of the holders of at least sixty-seven percent (67%) of the votes held by the entire membership all agreeing to such dedication, sale or transfer.

ARTICLE XII

DISSOLUTION

The Association may be dissolved if dissolution has been approved by the votes of the holders of at least sixty-seven percent (67%) of the votes held by the entire membership. Upon dissolution of the Association, the assets both real and personal of the Association shall be dedicated to an appropriate public agency to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes and uses that would most nearly reflect the purposes and uses to which they were required to be devoted by the Association.



ARTICLE XIII

MEETINGS FOR ACTIONS GOVERNED BY ARTICLES IX THROUGH XII

In order to take actions under Articles IX through XII above, there must be a duly held meeting. Written notice, setting forth the purpose of the meeting shall be given to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. The presence of members or of proxies entitled to cast sixty-seven percent (67%) of the votes of the membership shall constitute a quorum.

ARTICLE XIV

AMENDMENTS

Amendments to these Articles of Incorporation shall require the affirmative vote of the holders of at least sixty-seven percent (67%) of the votes held by the entire membership.

ARTICLE XV

CONFLICTS

In the event of a conflict between these Articles of Incorporation and the Declaration, the Declaration shall control. In the event of a conflict between these Articles of Incorporation and the Bylaws, these Articles of Incorporation shall control.

ARTICLE XVI

INCORPORATOR

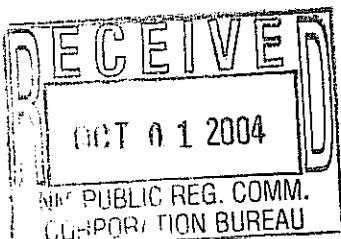
The name and address of the incorporator is:

Richard T. Bressan C/O Centex Homes
5120 Masthead NE
Albuquerque, New Mexico

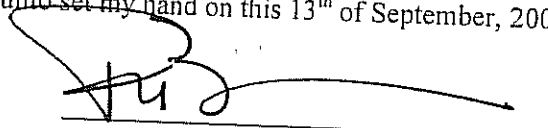
ARTICLE XVII

FHA/VA APPROVAL

As long as there is Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of common area, conveyance of common area, dissolution and amendment to these Articles of Incorporation.



IN WITNESS WHEREOF, I have hereunto set my hand on this 13th of September, 2004.

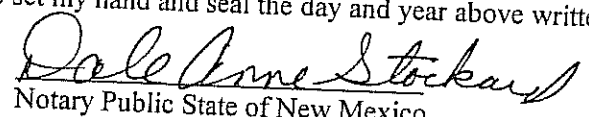

Richard T. Bressan

THE STATE OF NEW MEXICO)
COUNTY OF SANDOVAL) ss.
)

I, the undersigned authority, do hereby certify that on this 13th of September, 2004, personally appeared before me Richard T. Bressan who, being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

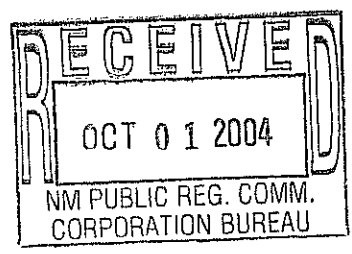
SEAL


Notary Public State of New Mexico

DALE ANNE STOCKARD
Notary Printed Name:
My Commission Expires: 3/14/07



OFFICIAL SEAL
DALE ANNE STOCKARD
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 3/14/07



Bylaws

Cabazon-Centex
Homeowners Association, Inc.

BYLAWS
OF
CABEZON-CENTEX HOMEOWNERS ASSOCIATION, INC.

Article I NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1. Name. The name of the Association shall be Cabezon-Centex Homeowners Association, Inc. ("Association").

1.2. Principal Office. The principal office of the Association shall be located in 5120 Masthead NE, Albuquerque, Bernalillo County, New Mexico 87109. The Association may have such other offices as the Board may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration unless the context indicates otherwise.

Article II ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. Membership. The Association shall have two classes of membership, Class "A" and Class "B," as set forth in the Declaration. The provisions pertaining to membership in the Declaration are incorporated herein by this reference.

2.2. Place of Meetings. Meetings of the Association shall be held within Rio Rancho or at such other suitable place within Sandoval County, New Mexico as may be designated by the Board.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year after incorporation of the Association. Subsequent regular annual meetings shall be held each year on a date and at a time set by the Board. In the event that a quorum, as defined in Section 2.11, is not present at an annual meeting, the Association may hold the meeting for informational purposes; provided, however, the Association may not take any action at such meeting unless a quorum is present.

2.4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Class "A" Members holding at least 25% of the voting power of the Association.

2.5. Notice of Meetings. The Association's Secretary or its designee shall cause written notice stating the place, day, and hour of any meeting of the Association to be given in any manner permitted by New Mexico law. If so permitted, notice may be posted in a conspicuous, prominent place within Cabezon-Centex, delivered by hand delivery or sent to each Member by United States mail, (postage prepaid), by facsimile, computer, fiber optics, cable, other similar communication devices or such other manner which is reasonably calculated, as determined in the discretion of the Board, to provide personal notice to the Members entitled to notice. Any notice shall be delivered not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or other officers or Persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

If posted, notice of a meeting shall be deemed delivered upon its posting. If mailed, notice shall be deemed delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, computer, fiber optics, cable, or such other similar communication device, notice shall be deemed delivered when transmitted to the Member at his or her address or number as it appears on the Association's records. The failure of any Member to receive actual notice of a meeting of the Members shall not affect the validity of any action taken at such meeting.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting by a Member shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may, without further notice, adjourn the meeting to a date not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

2.8. Voting. Members shall have such voting rights as set forth in the Declaration. Such voting rights provisions are incorporated herein by this reference. Members may vote at a meeting by voice vote or ballot or may vote by mail without the necessity of a meeting, as determined by the Board; provided, however, meetings shall be held when required by the Declaration, these Bylaws, or New Mexico law. Votes for the election of directors shall be cast by secret written ballot. All votes of the Members at meetings shall be subject to the quorum requirements of Section 2.11.

2.9. Proxies. Members may vote in person or by proxy.

Each proxy shall be in writing, dated, signed, and filed with the Secretary prior to the meeting for which it is to be effective. Proxies shall be deemed delivered to the Secretary, if delivered by personal delivery, U.S. mail, or facsimile to the Secretary, any Board member, or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail. If dated as of the same date, both proxies shall be deemed invalid. No proxy shall be valid more than 25 months after its execution. The proxy of any Member shall be revocable and shall automatically cease upon conveyance of such Member's Lot.

2.10. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Members, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence, in person or by proxy, of 10% of the Class "A" Members of the Association and, for so long as the Class "B" Membership exists, the presence of a duly appointed representative of the Class "B" Member, shall constitute a quorum at all meetings of the Association. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum; provided, unless otherwise specifically set forth in the Governing Documents, any action for which a vote of the Members at a meeting is required must be approved by at least a majority of the votes required to constitute a quorum.

2.12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall ensure that minutes of the meeting are kept and that all resolutions adopted at the meeting, as well as all transactions occurring at the meeting, are recorded in a minute book.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon at such meeting. All such consents shall be signed and dated within 60 days after receipt of the earliest dated consent, and

delivered to the Association at its principal place of business in New Mexico. Such consents shall be filed with the minutes of the Association.

Article III BOARD OF DIRECTORS

A. Composition and Selection.

3.1. Governing Body; Composition. The Association's affairs shall be managed by a Board of Directors which shall serve as the Association's corporate policy-making body. Each director shall have one equal vote. Except with respect to the initial directors named in the Articles of Incorporation, and further except with respect to directors appointed by the Class "B" Member, directors shall be Members; provided, no more than one representative from a particular Lot or Dwelling Unit may serve on the Board at the same time. Any Member who is delinquent in the payment of any assessment or other charge due the Association or the Council, or who is otherwise deemed by the Board to be in violation of the Governing Documents, shall not be eligible to serve on the Board. All directors shall complete, prior to commencing service on the Board, such training requirements as the Board establishes.

Directors shall be at least 18 years of age. In the case of a Member which is a partnership, corporation, or other such legal entity, any officer, director, partner, or trustee of such Member shall be presumed to be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member. No Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. Number of Directors. The number of directors in the Association shall be three or five. The initial Board shall consist of three directors as identified in the Articles.

3.3. Directors Appointed by the Class "B" Member. The directors which the Class "B" Member is entitled to appoint pursuant to Section 3.5 of these Bylaws shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4. Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient, and cost-effective manner. Nominations also may be permitted from the floor.

Nominations for election to the Board may also be made by a nominating committee. The nominating committee, if any, shall consist of three or more Persons, including a chairperson, who shall be a Board member.

The nominating committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

The nomination procedures shall not apply to directors appointed by the Class "B" Member or the Council, respectively.

3.5. Election and Term of Office. Annual elections for directors may be conducted by mail or, if permitted by New Mexico law, electronically, or at the Association's annual meeting. The Secretary shall cause notice of the elections to be mailed or delivered to each Member at least 10 days prior to the closing date established by the Board for filing of ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in Section 3.4 above, and all candidates for each vacancy nominated by the nominating committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be the "election date."

On the election date, the Board or an election committee appointed by the Board shall open and count the ballots. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

Subject to completion of the training requirements established by the Board pursuant to Section 3.1, directors elected at such annual elections shall take office no later than thirty (30) days following the election. Except as otherwise specifically provided in these Bylaws, each director shall serve three-year terms; provided, directors shall hold office until their respective successors are elected (or appointed as the case may be) and take office. Directors may serve up to two consecutive terms.

Notwithstanding the above or any other provision of these Bylaws:

(a) Until the ownership of twenty-five percent (25%) or more of the Lots by Class "A" Members, the Class "B" Member shall appoint the directors of the corporation.

(b) Within 120 days after the time that Class "A" Members other than Builders own 25% of the Lots planned for development under the Master Plans for the Community, or whenever the Class "B" Member earlier determines, the Association shall

hold an election at which Class "A" Members shall elect one of the three directors. (Directors elected by the Class "A" Members are referred to as "Class "A" Directors.") The Class "A" Director shall serve a term which expires when a successor Class "A" Director elected at the second succeeding annual election (calculated as if elections were held annually) takes office. Thereafter, each successor to the initial Class "A" Director shall serve a two-year term. The remaining two directors shall be appointees of the Class "B" Member.

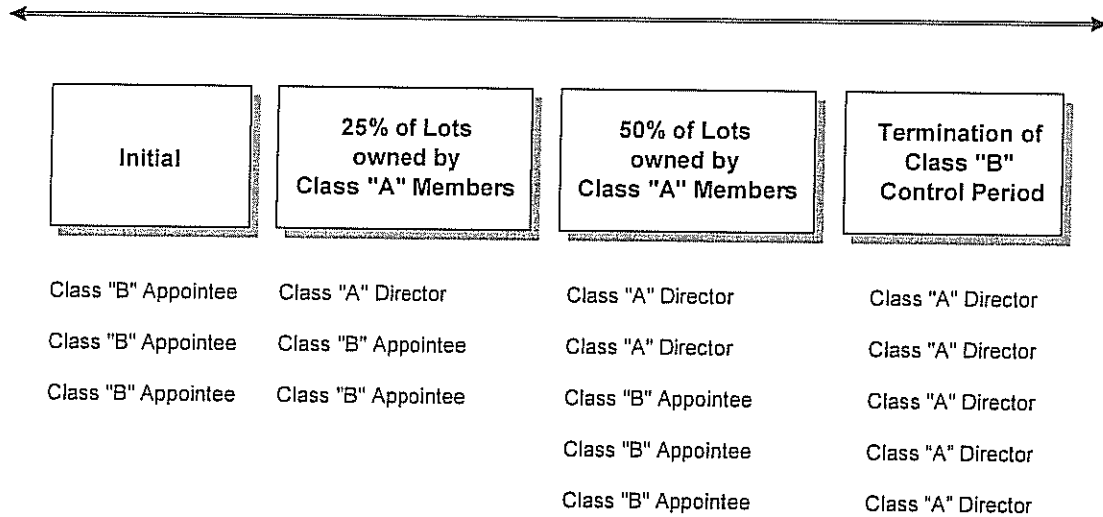
(c) Within 120 days after the time that Class "A" Members other than Builders own 50% of the Lots planned for development under the Master Plans for the Community, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors, two of whom shall be Class "A" Directors. One Class "A" Director shall continue to serve as described above. The other shall be elected by the Class "A" Members to serve a term which expires when a successor Class "A" Director elected at the second succeeding annual election (calculated as if elections were held annually) takes office or until the happening of the event described in subsection (c) below, whichever is earlier. If such director's term expires prior to the happening of the event described in subsection (c) below, a successor shall be elected for a like term. The remaining three directors shall be appointees of the Class "B" Member.

(d) Within 120 days after the termination of the Class "B" Control Period, the Association shall hold an election at which the Class "A" Members shall be entitled to elect four of the five directors.

The two Class "A" Directors receiving the most votes in the election shall serve a term which expires when the directors elected at the second succeeding annual election take office. The remaining Class "A" Directors shall serve a term which expires when the directors elected at the next succeeding annual election (calculated as if elections were held annually) take office. After expiration of each term described in this subsection (c), all Class "A" Directors shall serve two-year terms.

(e) Each Class "A" Member shall be entitled to cast one vote with respect to each Class "A" Director vacancy to be filled. There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected.

COMPOSITION OF BOARD CABEZON-CENTEX COMMUNITY ASSOCIATION,



3.6. Removal of Directors and Vacancies. Any Class "A" Director may be removed, with or without cause, by the vote of Class "A" Members holding two-thirds of the votes entitled to be cast for the election of such director at any meeting of the Association at which a quorum is present. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association or who is otherwise deemed by the Board to be in violation of the Governing Documents, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

Any director appointed by the Class "B" Member may be removed only by the Class "B" Member, acting in its discretion. Likewise, any Council appointed director may be removed only by the Council, in its discretion.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the

vacancy until the next annual meeting, at which time the Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term. In the event of the death, disability or resignation of a director appointed by the Class "B" Member or the Council, the Class "B" Member or the Council as appropriate, may appoint a successor director to fill the vacancy.

B. Meetings.

3.7. Organizational Meetings. Each Board shall hold an organizational meeting within 30 days after newly elected or newly appointed directors take office.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as the Board shall determine, but at least one such meeting shall be held each quarter. Notice of the time and place of the meeting shall be posted in a prominent place within the Community and communicated to directors not less than four days prior to the meeting; provided, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, computer, fiber optics, or any such other communication device. All such notices shall be given at the director's telephone, facsimile, or e-mail number or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board also shall be posted in a prominent place within the Community at least three days prior to such meeting. Notices sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile, or other device shall be delivered, telephoned, or transmitted at least 72 hours before the time set for the meeting.

3.10. Waiver of Notice. The transaction of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held and noticed if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall

constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. No director shall receive any compensation from the Association for acting as such; provided however, any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

3.13. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall ensure that a minute book is kept of all meetings of the Board, recording all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings.

3.14. Open Meetings. Subject to the provisions of Sections 3.15 and 3.16, all meetings of the Board shall be open to all Members, but a Member other than a director may not participate in any discussion or deliberation unless permission to speak is authorized by a vote of the majority of a quorum of the Board. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding Members, to discuss any or all of the following:

- (a) employment or personnel matters for employees of the Association;
- (b) legal advice from an attorney retained for the Board or the Association;
- (c) pending or contemplated litigation; or
- (d) pending or contemplated matters relating to enforcement of the Governing Documents.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed

by all of the directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board. Within three days after all written consents to an action have been obtained, the Board shall post in a prominent place within the Community a notice of the action to be taken or actually taken by the Board; provided, the obligation to post notice shall not apply to any action pertaining to any subject matter which could be discussed in an executive session of the Board as set forth in Section 3.14. Failure to give notice shall not render the action to be taken or actually taken invalid.

3.16. Video and Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call, video conference, fiber optics, or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those directors so participating shall be deemed present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

3.17. Statement of Operational Policy. It shall be the policy of the Association, in the interest of the efficient operation of the Association, that the Board refrain from unreasonably interfering with the performance of delegated functions by the management agent or other entities to whom authority and responsibility have been delegated. In the performance of its duties and responsibilities, the Board shall act as a unified body and no individual member of the Board shall be authorized to speak or act on behalf of the Board unless specifically authorized to do so in writing by the Board.

3.18. Powers. The Board shall have such powers as are necessary and appropriate for the management of the Association's affairs and for ensuring that the duties and responsibilities of the Association as set forth in the Declaration, these Bylaws, the Articles, any Supplemental Declaration, and as provided by law, are fulfilled. The Board may do or cause to be done all acts and things as are not required by the Declaration, Articles, these Bylaws, or New Mexico law to be done and exercised exclusively by Declarant or the membership generally. The Board may delegate powers to committees, officers, a management agent or agents, or employees of the Association and, if so delegated, such powers may be exercised without unreasonable interference by the Board.

3.19. Duties. The duties of the Board shall include, without limitation:

- (a) adopting annual budgets which establish each Owner's share of the Common Expenses and Neighborhood Expenses;
- (b) levying assessments against the Members to fund the Common Expenses, if any, and establishing policies governing collection of assessments; provided, to the extent required under the Community Covenant or the Declaration, the Association's

right to invoice and collect assessments from the Members shall be assigned to the Council;

(c) establishing policies for the operation, care, upkeep, and maintenance of the Area of Common Responsibility, if any, and ultimately, ensuring that such policies are carried forth;

(d) approving a bank depository to receive funds on behalf of the Association and directing that all such funds be so deposited and applied towards the operation of the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(e) adopting rules and regulations, including the Use Restrictions, and amendments thereto and approving sanctions for infractions thereof;

(f) opening of bank accounts on behalf of the Association and designating the signatories required;

(g) establishing policies and guidelines by which the Association shall make or contract for the making of repairs, additions, and improvements to or alterations of the Area of Common Responsibility in accordance with the Declaration and these Bylaws;

(h) enforcing the Declaration's provisions, these Bylaws, and the rules adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association; provided, the Board's obligations in this regard shall be conditioned as provided in Section 7.4 of the Declaration;

(i) ensuring that property, liability, and commercial crime insurance, as required in the Declaration, are carried by the Association, that the cost thereof is paid, and that claims are filed and adjusted, as appropriate;

(j) providing for the payment of all taxes and/or assessments which are or could become a lien on the Common Area or a portion thereof;

(k) providing for the payment of the cost of all services rendered to the Association or its Members and not chargeable directly to specific Members;

(l) providing that books with detailed accounts of the receipts and expenditures are kept on behalf of the Association and are made available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot;

(m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Articles, the Bylaws, rules and all other books, records, and financial

statements of the Association are made available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot;

(n) establishing policies and guidelines under which utility suppliers are permitted to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is permitted or required by New Mexico law, the Declaration, the Articles, and these Bylaws;

(p) cooperating with the Council in the performance of its rights and obligations under the Community Covenant and the Governing Documents and providing for the election of one or more members to serve on the Council's board of directors..

3.20. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have the right to disapprove any action, policy, or program of the Association, the Association's officers, the Board, any sub-association, and any committee which, in the judgment of the Class "B" Member, would tend to impair the rights of the Declarant or Builders under the Declaration or these Bylaws, interfere with development, construction, or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right of Declarant to approve or disapprove specific actions of the Association, the officers of the Association, the Board, any sub-association or any committee.

(a) The Class "B" Member shall be given prior written notice of all meetings and proposed actions to be approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee thereof. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Secretary of the Association. The notice shall specify the time and place of the meeting and shall set forth with reasonable particularity the agenda for such meeting.

(b) The Class "B" Member shall be given the opportunity at any such meeting to, from the floor, join in or have its representatives or agents join in discussion of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Members, the Board and/or the members of the subject committee.

(c) No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the Class "B" Member has not disapproved the action, policy or program prior to expiration of the time period set forth in subsection (d) below.

(d) The Class "B" Member may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, or action taken by an officer without a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not extend to the requiring of any action or counteraction on behalf of any committee, the Board, or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented in accordance with these Bylaws. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.21. Management. The Association may employ a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board shall delegate to the management agent such powers as are necessary to perform its assigned duties; provided, the Board may not delegate policymaking authority. Subject to the Board's responsibility to ensure compliance with policies established by the Board, upon delegation of powers to a managing agent, the Board shall not interfere with the day-to-day management of Association affairs by the management agent.

During the Class "B" Control Period, at the request of the Declarant, the management agent shall be terminated by the Association, in accordance with the management agreement. In addition, the management agent may be terminated at any time by the Association, in accordance with the management agreement, if such action is requested by a majority of the Board and a majority of the Class "A" Members present in person or by proxy at a special meeting called for such purpose; provided, any meeting to vote on the termination of the management agent shall be called by a majority vote of the Board in favor of termination.

Declarant, or Declarant's affiliate, may be employed as a management agent. The Board may designate one of its members as responsible for communications with the management agent between meetings of the Board; provided, such individual shall not have independent authority to supervise, direct, or interfere with the activities of such management agent.

3.22. Accounts and Reports. The following management standards of performance shall be followed unless the Board, by resolution, specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls over financial reports and safeguarding of assets should be consistent with the criteria for effective internal controls described in "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the management agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the management agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) the following financial and related information shall be regularly prepared and made reasonably available for examination by all Members:

(i) a capital expenditures budget and a Common Expense budget for the Association (which includes the budget for each of the Benefited Areas, if any) for each fiscal year of the Association. The Budget shall be made available for examination in the manner provided in the Declaration.

(ii) an annual report ("Financial Statement") in accordance with generally accepted accounting principles. Within 120 days after the close of the Association's fiscal year, a summary of the Financial Statement or a written notice that a copy of the Financial Statement is available at the business office of the Association or another suitable location within the Community shall be posted in one or more prominent places within the Community. If requested, one copy of the Financial Statement may be distributed personally, by mail, or such other manner as is reasonably designed to provide delivery to a Member, without charge. The Financial Statement shall consist of:

(A) a balance sheet as of the end of the fiscal year;

(B) an income statement for the fiscal year; and

(C) a statement of cash flows for the fiscal year.

The Financial Statement shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

(iii) The following shall be done at least quarterly:

(A) a current reconciliation of the Association's operating accounts;

(B) a current reconciliation of the Association's reserve accounts;

(C) a review of the current year's actual reserves, revenues and expenses compared to the current year's Budget;

(D) a review of the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(E) a review of an income and expense statement for the Association's operating and reserve accounts; and

(F) a review of the delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent.

3.23. Borrowing. The Association, acting through its Board, shall have the power to borrow money for any legal purpose; provided, the Board shall obtain the approval by vote or written consent of a majority of the Class "A" Members and the Class "B" Member, if any, if the proposed borrowing is for the purpose of making discretionary capital improvements or purchasing additional capital assets and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 10% of the budgeted gross expenses of the Association for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent of at least a majority of the Class "A" Members.

3.24. Right to Contract. Subject to applicable law relating to Member, officer, and director conflicts of interest, the Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, both within and outside the Properties.

3.25. Enforcement.

(a) Notice. Prior to imposition of any sanction provided in the Declaration, other than self-help or suit to enjoin any violation of the Declaration, Bylaws, Articles, or rules and regulations of the Association and/or to recover monetary damages, the alleged violator shall be served with written notice setting forth (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Secretary of the Association within 15 days of delivery of the notice; and (iv) a statement that the proposed sanction

shall be imposed as contained in the notice unless a request for a hearing is received by the Secretary of the Association within such time period. Proof of proper notice shall be placed in the Association's corporate records. Proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is so entered. The notice requirement shall be deemed satisfied if the alleged violator requests a hearing.

If a timely request for a hearing is not received by the Secretary of the Association, the sanction stated in the notice shall be imposed; provided, any proposed sanction may be suspended if the violation is cured or if a cure is diligently commenced within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted 15-day period, the hearing shall be held before the covenants committee, if any, or if none, before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. A written statement of the results of the hearing and the sanction, if any, imposed shall be recorded in the corporate records.

(c) Appeal. If a hearing is held before the Deed Restriction Enforcement Committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the Association's Secretary or designee within 15 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help or abatement (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

3.26. Board Standards. In performing his or her duties, each director and officer shall act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director or officer reasonably believes to be in the best interests of the Association. A director or officer acting in accordance with such standards acts in accordance with the business judgment rule and shall be insulated from personal liability as provided under New Mexico law and as otherwise provided by the Governing Documents.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are

reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

Article IV OFFICERS

4.1. Officers. The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The officers need not be members of the Board and need not be Members or residents of the Community. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office. The officers of the Association shall be elected by the Board at an organizational meeting of the Board taking place pursuant to Section 3.5. Each officer shall serve a one year term; provided, each officer's term shall automatically renew unless at least two-thirds of the directors vote not to renew.

4.3. Removal and Vacancies. Any officer may be removed by a vote of at least two-thirds of the directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as may specifically be conferred or imposed by the Board; provided, the Board may not confer or impose powers or duties which may not otherwise be exercised by the Board. In the exercise of delegated responsibilities, officers shall not direct or unreasonably interfere with the day-to-day operations of the Association's management agent, if any, or such Persons designated or employed by the Board to perform management functions. By way of example, and not limitation, the officers shall have the following powers and duties:

(a) President. The President shall be the Association's chief executive officer of the Association and shall exercise general supervision and direction of the affairs of the Association. The President shall have the authority to directly administer all matters not expressly delegated or assigned to a managing agent or agents or others.

(b) Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

(c) Secretary. The Secretary shall be responsible for ensuring that the minutes of all meetings of the Association, the Board, and the committees of the Board are kept, and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, any officer directed by the Board shall perform all duties incident to the office of secretary.

(d) Treasurer. The Treasurer shall have responsibility for ensuring the preparation of the Budget as provided for in the Declaration and these Bylaws by the management agent or agents retained by the Association or, if no managing agent is so retained, such persons retained by the Board to perform management functions.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. 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.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association (other than for the withdrawal of reserve funds) shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board. The Board shall require signatures for the withdrawal of reserve funds of either two members of the Board or a member of the Board and officer of the Association who is not also a member of the Board. For purposes of this Section, "reserve funds" means monies the Board has identified in the capital expenditures budgets for use to defray the future repair or replacement of those replaceable assets which the Association is obligated to maintain and for use in making additional capital improvements and purchasing additional capital assets.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12 hereof.

Article V COMMITTEES

5.1. Committees of the Board. Committees comprised solely of Members of the Board may be appointed to exercise the authority of the Board. Such committees shall be appointed upon the approval of at least a majority of the directors. Notwithstanding the above, no such committee may exercise the authority of the Board in reference to (a) submission to the Members of any matter requiring an act of the Members; (b) filling vacancies on the Board or on any committee of the Board; (c) adoption, amendment, or repeal of the Bylaws; or (d) fixing compensation of directors. The Board may, with or without cause, dissolve any such committee or remove any director from the committee at any time.

5.2. Other Committees. In addition to committees of the Board as set forth in Section 5.1 and such other committees as are required or authorized under the Governing Documents, the Board, by resolution from time to time, may establish such committees and charter clubs as it deems appropriate. Any such committee may perform such tasks and functions as the Board may designate by resolution; provided, no committee or

committee member may exercise any power or authority which could not otherwise be exercised by the Board in accordance with these Bylaws. The role of committees established pursuant to this Section shall be to advise the Board with respect to establishing operational policy or to assist the officers in the performance of their respective functions. No committee or committee member shall be authorized to perform or interfere with the Association's day-to-day operations.

Each committee appointed pursuant to this Section shall consist of at least one director. Other committee members may be Members or residents of the Community. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including the committee chair, may be removed by the vote of a majority of the directors. Any resolution establishing a charter club shall designate the requirements, if any, for membership therein. Each committee and charter club shall operate in accordance with the terms of the resolution establishing such committee or charter club.

5.3. Deed Restriction Enforcement Committee. In addition to any other committees which the Board may establish pursuant to Sections 5.1 and 5.2, the Board may appoint a Deed Restriction Enforcement Committee consisting of at least three and no more than seven members. Acting in accordance with the Governing Documents, the Deed Restriction Enforcement Committee, if any, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.25.

Article VI MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall begin on January 1st and end on December 31st, unless otherwise established by Board resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with New Mexico law, the Articles, the Declaration, or these Bylaws.

6.3. Conflicts. If there are conflicts between the provisions of New Mexico law, the Articles, the Declaration, and these Bylaws, the provisions of New Mexico law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. Subject to the exceptions set forth below, the Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly authorized agent of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, Bylaws, and Articles, any amendments to the foregoing, the rules of the Association, the membership register, all financial records of the Association, and the minutes of meetings of the Members, the Board, and

committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Community as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made;
and

(iii) payment of the cost of reproducing and delivering copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association in furtherance of such director's duties as a director.

(d) Exceptions to Inspection Requirement. Notwithstanding any provision to the contrary, the Board shall not be required to make available for inspection any portion of any book or record which relates to any of the following:

(i) personnel matters or a person's medical records;

(ii) communication between an attorney for the Association and the Association;

(iii) pending or contemplated litigation;

(iv) pending or contemplated matters relating to enforcement of the Governing Documents; or

(v) meeting minutes or other records of a session of a Board or Association meeting that is not required by law to be open to all Members.

In addition, the Board shall not be required to disclose or make available for inspection any financial or other records of the Association if disclosure would violate local, state, or federal law.

6.5. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications shall be in writing and shall be sent as follows:

(a) if to a Class "A" Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, any officer of the Association, or the management agent, at the principal office of the Association or the management agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to Declarant or the Class "B" Member, at the principal office of Declarant or Class "B" Member, or at such other address as is designated in writing and filed with the Secretary of the Association.

All such notices shall, for all purposes, be deemed delivered and received (a) upon personal delivery to the party or address specified above, or (b) on the third day after being deposited in the United States mail, postage prepaid and properly addressed.

6.6. Indemnification. To the fullest extent permitted by New Mexico law, as amended from time to time, the Association shall indemnify every officer and director (in their capacity as such) against all damages and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding brought against them (including any settlement thereof, if approved by the Board). This right to indemnification shall not be exclusive of any other rights to which any present or former officer or director may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and directors and officers liability insurance to fund this obligation.

6.7. Amendment.

(a) By Class "B" Member. The Class "B" Member may unilaterally amend these Bylaws if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of these Bylaws. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

In addition, until conveyance of the first Lot by Declarant to a Person other than a Builder, the Class "B" Member may unilaterally amend these Bylaws for any purpose. Thereafter, the Class "B" Member may unilaterally amend these Bylaws, for purposes in

addition to those specified above, provided the amendment has no material adverse effect upon the right of any Owner.

(b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the Class "A" votes in the Association, and the consent of the Class "B" Member, if any. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon execution by the Class "B" Member, if applicable, and by the Association, if applicable, in the manner provided in these Bylaws, unless a later date is specified in the amendment. Any procedural challenge to an amendment must be made within three months of the effective date of such amendment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to do so, and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

Notwithstanding any provision herein to the contrary, no amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the assignee of such right or privilege for as long as Declarant owns any property described on Exhibits "A" or "B" to the Declaration.

(d) Right of Community Council. No amendment to these Bylaws which materially affects the rights or interests of the Council, including the right to appoint a member of the Board, shall be valid or effective unless and until approved in writing by the Council.

6.8. Membership Book. The Board shall keep and maintain at the Association's principal office of business a book containing each Member's name and address. Termination or transfer of membership shall be recorded in the book, together with the date on which such ownership was transferred.

6.9 Diagrams. All diagrams which are included in these Bylaws are intended only to summarize the express written terms of the Governing Documents. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

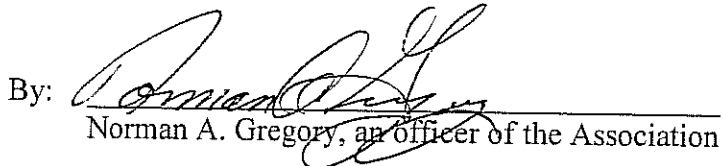
Under penalties of perjury I declare that I have examined these Bylaws for the Cabezon-Centex Homeowners Association, Inc. and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that as an officer of said Association, I have the authority to sign this document on behalf of the Cabezon-Centex Homeowners Association, Inc.

EXECUTED this 13th day of September, 2004

Cabezon-Centex Homeowners Association, Inc.,
a New Mexico non-profit corporation

By: 

Richard T. Bressan, an officer of the Association

By: 

Norman A. Gregory, an officer of the Association

THE STATE OF NEW MEXICO

)

) ss.

COUNTY OF SANDOVAL

)

I, the undersigned authority, do hereby certify that on this 13th of September, 2004, personally appeared before me Richard T. Bressan who, being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator and that the statements therein contained are true.

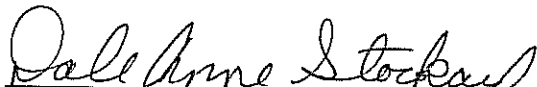
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

SEAL



OFFICIAL SEAL
DALE ANNE STOCKARD
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 3/14/07


Notary Public State of New Mexico

DALE ANNE STOCKARD
Notary Printed Name:
My Commission Expires: 3/14/07

THE STATE OF NEW MEXICO

COUNTY OF SANDOVAL

)
) ss.
)

I, the undersigned authority, do hereby certify that on this 13th of September, 2004, personally appeared before me Norman A. Gregory who, being by me first duly sworn, declared that he is the person who signed the foregoing document as incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

SEAL



OFFICIAL SEAL
DALE ANNE STOCKARD
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: 3/14/07

Dale Anne Stockard
Notary Public State of New Mexico

DALE ANNE STOCKARD
Notary Printed Name:

My Commission Expires: 3/14/07

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of the Association;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board thereof held on the 13th day of September, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 13th day of September, 2004

Joseph LaMendola
Joseph LaMendola, Secretary

Declaration of
Covenants, Conditions
and Restrictions

Cabazon-Centex
Homeowners Association, Inc.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
CABEZON - CENTEX

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

WITNESSETH

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

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

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

ARTICLE I

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

CABEZON - CENTEX HOMEOWNERS ASSOCIATION, INC.

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

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

Section 2.3 **Regular Assessment or Charge.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

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

- (a) Taxes and assessments and other liens and monetary encumbrances which will properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.
- (b) Care and preservation of the Common Areas and the Common Maintenance Areas.
- (c) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors (provided that any contract for management of the Association will be immediately terminable, without cause, by the Association, with no penalty, upon no more than 90 days prior written notice to the managing party), and the services of such other personnel as the Board of Directors will determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board of Directors or by the manager.
- (d) Legal and accounting services.
- (e) A policy or policies of insurance insuring the Association and/or its Board of Directors and officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors, including a policy or policies of insurance as provided herein in Article IV.
- (f) Workers compensation insurance to the extent necessary to comply with any applicable laws.
- (g) Such fidelity bonds as may be required by the By-laws or as the Board of Directors may determine to be advisable.
- (h) Normal recurring expenses as described in paragraph 2.3(e).
- (i) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion will be necessary or proper for the enforcement of this Declaration.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

TITLE TO COMMON AREAS

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

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

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

ARTICLE V

ARCHITECTURAL REVIEW

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

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

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

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

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

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

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

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

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

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

ARTICLE VI

EASEMENTS

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

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

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

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

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

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

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

ARTICLE VII

USE AND OCCUPANCY

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

ARTICLE VIII

PROPERTY RIGHTS

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

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

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

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

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

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

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

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

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

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

ARTICLE IX

USE RESTRICTIONS

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

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

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

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

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

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

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

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

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

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

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

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

Section 9.5 Vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X

PICKETING AND DEMONSTRATIONS

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

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

ARTICLE XI

ANNEXATION

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

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

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

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

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

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

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

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

ARTICLE XII

GENERAL

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

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

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

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

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

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

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

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

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

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

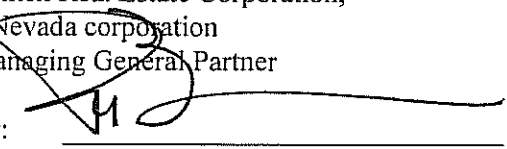
Section 12.10 Partial Invalidity. The invalidation of any one of these covenants by judgment or court order will in no way affect any of the other provisions, which will remain in full force and effect.

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

DECLARANT:

CENTEX HOMES,
a Nevada general partnership

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

By: 
Richard T. Bressan
Land Acquisition Manager

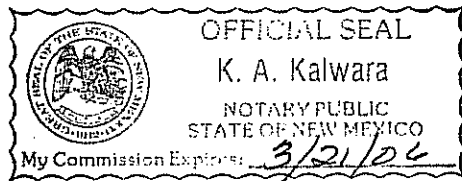
STATE OF NEW MEXICO

COUNTY OF

Bernalillo

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



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

AFTER RECORDING RETURN TO:

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

EXHIBIT "A"

The Property

All of the Lots in Cabezon - Centex, a subdivision in Sandoval County according to Tract 7A, Phase I recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2445-B as Document 24953 and Tract 7A-1-A, Phase II recorded on August 5, 2004 at 4:30 pm in Volume 3 of the records of Sandoval County, Folio 2446-A as Document 24954, Plat Records of Sandoval County, New Mexico.

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EXHIBIT "B"

Plat

SANDOVAL COUNTY

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EXHIBIT "C"

Eligible Property

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

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