

**FOURTH AMENDMENT TO DECLARATION**

OF

**COVENANTS, CONDITIONS AND RESTRICTIONS**

OF

**ALTO GOLF ESTATES AT THE OUTLAW**  
*Previously Known As*  
**LINCOLN HILLS**

**A RESIDENTIAL SUBDIVISION PROJECT**  
**LOCATED IN THE**

**COUNTY OF LINCOLN**

**STATE OF NEW MEXICO**

**INDEX**

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**FOURTH AMENDMENT TO DECLARATION OF  
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THIS FOURTH AMENDMENT TO DECLARATION is made this 21st day of May, 2015, by OUTLAW PARTNERS, LLLP, a New Mexico Limited Liability Limited Partnership, hereinafter referred to as the "Declarant" or "Outlaw Partners", as follows:

**WITNESSETH:**

**WHEREAS**, on June 9, 2006 at 9:46:33 a.m., Hunter's Draw, LLC, a New Mexico Limited Liability Company ("Original Declarant"), filed the Declaration of Covenants, Conditions and Restrictions (the "Original Declaration"), which Original Declaration is recorded in Volume 2006, Page 5452, Real Property Records, Lincoln County, New Mexico (the "Declaration") and which subjected the Property described therein to the Original Declaration (the "Subjected Property");

**WHEREAS**, Original Declarant conveyed the Subjected Property and the Golf Course to Alto Land Developers Limited Partnership, a New Mexico Limited Partnership ("ALD"), which then filed the First Amendment to Declaration for Lincoln Hills, which First Amendment to Declaration was recorded on June 9, 2006 at 9:47:04 a.m., in Volume 2006, Page 5453, Real Property Records, Lincoln County, New Mexico ("First Amendment to Declaration");

**WHEREAS**, the Declarant purchased the Property and the Golf Course (hereinafter defined), from Lee Griffin, Receiver, (the "Receiver") pursuant to Court Order dated June 17, 2011, in Cause No. CV10-275 in the Twelfth Judicial District Court, County of Lincoln, State of New Mexico in litigation styled as follows: Hillcrest Bank, a Kansas State Banking Association, Plaintiff vs. Alto Land Developers, Limited, a New Mexico Limited Partnership and The Outlaw Club, L.L.C., a New Mexico Limited Liability Company, Defendants

**WHEREAS**, Declarant took title to the Property pursuant to a Receiver's Deed which was filed on July 29, 2011, as Document 201104656 in Volume 2011, Page 4656, Real Property Records, Lincoln County, New Mexico and an Assignment of Declarant's Rights from the Receiver to Declarant which was filed on July 29, 2011, as Document 201104657 in Volume 2011 Page 4657 Real Property Records, Lincoln County, New Mexico.

**WHEREAS**, Declarant filed a Second Amendment to Declaration which was filed on July 29, 2011, as Document 201104659 in Volume 2011, Page 4659, Real Property Records, Lincoln County, New Mexico (the "Second Amendment to Declaration").

**WHEREAS**, Declarant filed a Third Amendment to Declaration which was filed on August 16, 2013, as Document 201305689 in Volume 2013, Page 5689, Real Property Records, Lincoln County, New Mexico (the "Third Amendment to Declaration").

**WHEREAS**, the original Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, and the Third Amendment to Declaration (collectively for the purposes hereof, the "Declaration") govern the Subjected Property; and

**WHEREAS**, it is the desire of the Declarant to amend the Declaration (as previously amended) to the extent and as set forth herein.

**NOW THEREFORE**, Declarant hereby declares that the Subjected Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, as set forth in this Fourth Amendment to Declaration, which are for the purpose of establishing and continuing the general scheme for the development and the sale of lots in the Subdivision and for the purpose of enhancing and protecting the value, attractiveness and desirability of said lots and which shall run with the land and be binding upon all parties, entities or persons having or acquiring any right, title or interest in the Subjected Property or to any part thereof, and which shall inure to the benefit of each Owner thereof. This Fourth Amendment shall be regarded as a complete amendment and restatement of the Third Amendment to Declaration.

**ARTICLE I**  
**DEFINITIONS**

The following words when used in this Fourth Amendment to Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(a) "Architectural Review Committee" or "Committee" shall mean the committee created pursuant to this Fourth Amendment to Declaration to approve of the actual pad location within the lot dimensions, review and approve plans for the construction of Improvements upon the Property and to otherwise perform the duties, responsibilities and functions set forth herein..

(b) "Articles" shall mean the Articles of Incorporation of Alto Golf Estates at the Outlaw Property Owners Association, Inc., a New Mexico non-profit corporation which have or shall be filed in the office of the Secretary of State of the State of New Mexico, as from time to time amended.

(c) "Association" shall mean and refer to the Alto Golf Estates at the Outlaw Homeowners' Association, Inc., a New Mexico non-profit corporation, which is to be formed and incorporated (unless otherwise consented to by Declarant) after seventy-five percent (75%) of the lots are sold to individual homeowners and which will have the power, duty and responsibility of maintaining and administering the Common Properties, collecting and disbursing the assessments and charges hereafter prescribed, and will have the right to administer and enforce the covenants and restrictions contain in this Fourth Amendment to Declaration.

(d) "Authorities" shall mean appropriate local, municipal, county, state and/or Federal Agencies of Government.

(e) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(f) "Bylaws" shall mean and refer to the bylaws for the Association, as may be amended from time to time.

(g) "Club" means the Alto Lakes Golf and Country Club, Inc.

(h) "Club Bylaws" shall mean the Bylaws of the Club, as same may be amended from time to time.

(i) "Committee" shall mean Architectural Review Committee.

(j) "Common Properties" shall mean and refer to (i) those properties listed in Article VIII which shall include, but not be limited to, streets and roads, streetlights, entry features, signs and graphic directional signage, landscaping on areas associated with item (iii); (ii) the easements associated with item (i); and (iii) any areas of land, improvements or other property rights (including any rights to utilities, utility easements or rights of way) within the Property which are known, described or designated as Common Properties intended for or devoted to the common use and enjoyment of the Owners, together with any and all improvements that are now or may hereafter be constructed thereon.

(k) "County" shall mean Lincoln County, New Mexico.

(l) "Declarant" shall mean and refer to Outlaw Partners, LLLP, a New Mexico Limited Liability Limited Partnership and/or its successors and assigns.

(m) "Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to architecture design, construction, placement, location, alteration and maintenance of Improvements, landscaping and vegetation and any additional criteria and guidelines established by the Architectural Review Committee, as they may be amended from time to time at the sole discretion of the Architectural Review Committee.

(n) "Golf Course" shall mean the Outlaw Golf Course, clubhouse, cart barn, and improvements thereon which is identified on the Plat as Golf Course and includes those parcels identified on the Plat as Tracts E, F, G and H and Lots 28A and 29A, as well as any other property owned by the Club. The Outlaw Golf Course was conveyed to the Club by Declarant immediately following Declarant's acquisition of the Property and the Golf Course. The Golf Course is the property of the Club and is to be exclusively maintained by the Club (See Section 8.2 below.)

(o) "Greenbelt Area/Space" shall mean all areas designed by Declarant and shown on the recorded Plat to be held as open space.

(p) "Lot" (or "lot") shall mean any individual lot reflected on the Plat or on any subsequent replat of any portion of the Subjected Property.

(q) "Member" shall mean and refer to each Owner as provided in Article VII hereof.

(r) "Owner" shall mean and refer to every person or entity that is a record Owner of a fee or undivided fee interest in any lot, which is subject to the Declaration, the First Amendment

to Declaration and this Second Amendment to Declaration. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

(s) "Plat" shall mean and refer to the Plat of Lincoln Hills which was filed for record in the Office of the Clerk of Lincoln County, New Mexico, on June 9, 2006 in Cabinet I, Slide No. 533, at Reception Number 200605454, as amended by the Replat of Lot 44A & Part of Tract G, filed in said records on February 23, 2007 in Cabinet I, Slide No. 656, as further amended by the Replat of Lot 40B, 41B & Part of Tract H, filed in said records on December 28, 2006 in Cabinet I, Slide No. 630 (and as it has been and may be further amended in the future) as well as any and all subsequent replats of any lot or lots within the perimeter boundary of the Plat of Lincoln Hills which may occur from time to time.

(t) "Property" or "Properties" shall mean and refer to all of that land located within the boundary of the original Plat of Lincoln Hills, except for such property as may be released from the encumbrance of the Declaration (as amended hereby or by future amendments to the Declaration).

(u) "Second Amendment to Declaration" shall mean and refer to the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Alto Golf Estates at the Outlaw.

(v) "Special Membership" shall mean Lincoln Hills Special Memberships issued by the Club to Owners as provided the Amendment to Declaration and in Article III, Section 1,c(2) of the Club Bylaws, or by any subsequent amendment to the Club Bylaws.

(w) "Subdivision" shall mean the Subjected Property, formerly known as Lincoln Hills and now known as the Outlaw Golf Course and Alto Golf Estates at the Outlaw and the "Property or "Properties" as defined above.

(x) "Third Amendment to Declaration" shall mean and refer to the Third Amendment to Declaration of Covenants, Conditions and Restrictions for Alto Golf Estates at the Outlaw.

**ARTICLE II**  
**CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS**

Section 2.1 Entrances. The Subdivision shall not be a subdivision in which entrances are mandated to be gated as set forth in the First Amendment to Declaration. Provided, however, the Declarant or the Association may make such rules regarding the installation of gates at the entrances to the Subdivision or at any place within the Subdivision as it may determine according to its bylaws. Any such decision to install gates or otherwise control access to the subdivision shall not impair the rights of access of members of the Club to the Golf Course or to other Club facilities or property within the Subjected Property.

Section 2.2 Residential Use.

(a) All lots shall be used for residential purposes only except as permitted herein. No building shall be erected, altered, placed, or permitted to

remain on any lot without the prior written approval of the Plans and Specifications for the Improvement(s) by the Architectural Review Committee and compliance with the Design Guidelines. The Architectural Review Committee shall govern the location and height of any improvements constructed within the Subjected Property. The Architectural Review Committee may make its determination through the issuance of Design Guidelines which may be amended from time to time or by determination in singular circumstances. Residential Use shall include detached single family residences, condominiums, or attached villas/garden homes. Only one residential dwelling may be constructed on any lot (exclusive of guest houses for the convenience of visitors/guests of the Owner).

- (b) A lot (or a portion of a lot) may be used for non-residential purposes if it has been conveyed to and is owned by the Club and then, only for the common purposes of the Club and for the enjoyment or benefit of the members of the Club. Provided, further, any non-residential use by the Club of any lot shall be subject to a landscape buffer as designated or required by the Architectural Review Committee which separates such lot as is being used by the Club for non-residential purposes from any adjacent lot which is designated for use for residential purposes. Further, the Architectural Review Committee may (i) allow a Lot (or any portion thereof) to be used for non-residential purposes if the primary use of such Lot (or portion thereof) is for the common use or enjoyment or for the common benefit or convenience of the owners of more than one Lot, and (ii) designate a permanent easement for common benefit and enjoyment for the owners of one or more lots. In the event of the designation of such Common Benefit Easement, no residential structure may be erected on such lot and such designation shall not be considered a transfer and no Membership shall attach to such Lot. Any such designation of non-complying use or acceptance for easement shall be permitted only by the written approval of the Architectural Review Committee.

Section 2.3 Permanent Residence; Single Family Use. Except as otherwise provided herein, each residence may be permanently occupied by only one family consisting of persons related by blood, adoption or marriage or no more than two unrelated persons living and cooking together as a single housekeeping unit, together with any household servants. Provided, however, a residence may be owned, occupied or used by more than one family if each such family has a separate membership in the Club.

Section 2.4 Garages. Each residence shall have a garage suitable for parking not less than two (2) standard size automobiles, which garage conforms in design and materials with the main structure. The placement of garages on corner lots shall be subject to special approval of the Architectural Review Committee. Detached garages shall be constructed of the same material as the main structures.

Section 2.5 Restrictions on Re-Subdivision. No Lot shall be further divided or subdivided, nor may any easement or other interests therein less than the whole be conveyed by the Owner thereof without the approval of the Architectural Review Committee. Declarant, who is the owner of several parcels of land identified on the recorded Plat as Tract A, Tract B, and Tract C, shall have the right at any time to incorporate within the scheme of this Fourth Amendment to Declaration additional properties so long as such properties are within the Subjected Property, within the area designated as Tract A, Tract B, or Tract C on the recorded plat, or are immediately adjacent to the Subjected Property, Tract A, Tract B or Tract C. Declarant may further divide and subdivide any Lot(s), Tracts A, B, or C into smaller parcels to include golf villas, town homes and condominium development or otherwise. Notwithstanding anything seemingly to the contrary contained herein, Declarant shall have the right to further divide, subdivide, or combine Lots without the approval of the Architectural Review Committee.

Section 2.6 Replat; Merger of Lots. Two or more separate lots which are contiguous to one another may be replatted into one single lot (a "Single Lot Replat") with the prior written approval of the Committee. In the event of a Single Lot Replat, the owner of the Lot shall only be reflected as the owner of one Lot and shall only be responsible for the payment of dues to the Homeowner's Association for one Lot and for the payment of dues to the Club for one membership in the Club.

Section 2.7 Uses Specifically Prohibited.

- (a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of temporary character (except children's playhouses, dog houses, greenhouses, gazebos, which may be placed on a lot only in places which are not visible from any street on which the lot fronts) shall be permitted on any lot except that the builder or contractor may have temporary improvements (e.g., sales office, construction trailer, etc.) on a given lot during construction of the residence in the Subdivision (any such improvements shall be neatly landscaped). No structure of a temporary character, such as a trailer, tent, shack, barn, or other out-building shall be used on any lot or property at any time as a dwelling house.
- (b) No building material of any kind or character shall be placed or stored upon any Lot until the Owner thereof is ready to commence construction of improvements, and then such materials shall be placed within the property lines of the lot upon which the improvements are to be erected.
- (c) No boat, marine craft, hover craft, aircraft, recreational vehicle, pick up camper, travel trailer, trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street in the Subdivision, nor shall any such vehicles or equipment be parked for storage in the side or rear yard of any residence unless completely concealed from public view within a garage or similar permanent structure which has been approved by the Committee. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in



use for the construction, maintenance, or repair of a residence in the immediate vicinity. For the purposes of this subsection, "Storage" shall mean prolonged parking in one location without significant movement for a period in excess of seven (7) consecutive days. The determination of "Storage" shall be in the sole discretion of the Architectural Review Committee.

- (d) Trucks with tonnage in excess of three-quarter (3/4) ton and any vehicle with painted advertisement shall not be permitted to park overnight within the Subdivision except those used by a builder during the construction of improvements or in a garage.
- (e) No vehicle of any size which transports flammable or explosive cargo may be kept in the Subdivision at any time.
- (f) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Subdivision. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Subdivision.
- (g) No animals, livestock or poultry of any kind shall be raised, bred or kept on any property in the Subdivision except that dogs, cats or other household pets as long as they live indoors and are not otherwise prohibited by law may be kept for the purpose of providing companionship for residents. Animals are not to be raised, bred, or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, rabbits, peacocks, goats, guinea fowls, ducks, chickens, turkeys, skunks, or any other animals that may interfere with the quietude, health, or safety of the community. No more than four (4) pets will be permitted on each lot. Pets must be restrained or confined on the homeowner's back lot inside a fenced area, approved by the Committee, or within the house. No animal shall be allowed to make an unreasonable amount of noise. No domestic pet shall be allowed on any portion of the Property other than the Lot of its Owner unless confined on a leash. Domestic pets shall not be tethered to a fixed stake or guideline. It is the pet Owner's responsibility to keep the lot clean and free of pet debris. All animals must be properly tagged for identification.
- (h) No lot or other area in the Subdivision shall be used as a dumping ground for rubbish, trash, garbage or other waste shall only be kept in sanitary containers in appropriate locations which may be specified by the Committee for use as the "Community Solid Waste" disposal area. Unless otherwise expressly permitted by the Committee, such containers shall

be situated and enclosed or screened so as not to be visible from any residential street, private drive or adjacent lot. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition; Materials incident to construction of improvements may be stored on lots during the construction so long as construction progresses without undue delay.

- (i) All utility meters, equipment, air-conditioning compressors, heating units and similar items must (to the extent reasonable and practicable) be visually screened from the street and the adjoining lots by landscaping and screening approved by the Committee and must be located in areas acceptable to the Committee.
- (j) No air-conditioning apparatus shall be installed on the ground in front of a residence unless otherwise approved by the Committee. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed. All utility meters, equipment, air-conditioning compressors, air-conditioning and heating units and similar items must (to the extent reasonably practicable) be visually screened from the street and adjoining lots with landscaping and screening approved by the Committee and must be located in areas acceptable to the Committee.
- (k) No antennas shall be permitted in the Subdivision except antennas for AM or FM radio reception and UHF and VHF television reception. All antennas shall be located inside the attic of the main residential structure except that with the written permission of the Committee a satellite dish greater than 20 inches in diameter may be located on the lot so long as it is screened from public view as approved by the Committee. No use shall be made of any lot or structure thereof for any type of radio or television or similar broadcasting system.
- (l) No lot or improvement shall be used for commercial sales or manufacturing purposes of any kind. No noxious or offensive activity shall be undertaken within the Subdivision, nor shall any activity be engaged in which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's temporary use of a residence as a sales office until such builder's last residence in the Subdivision is sold. Nothing in this subparagraph shall prohibit an Owner's use of a residence for a home office or for quiet, inoffensive activities such as tutoring or giving art or music lessons so long as such activities do not require cars to be parked on the street.
- (m) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at

points ten feet (10) from the intersection of the street right-of-way line with the edge or a private driveway.

- (n) Except for children's playhouses, doghouses, greenhouses, accessory buildings, and gazebos approved by the Committee, no building previously constructed elsewhere shall be moved onto any lot, it being the intention that only new construction be placed and erected thereon.
- (o) Within easements on each lot, no structures, planting or material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may change the direction of flow within drainage channels or which may obstruct or retard the flow of water through drainage channels.
- (p) No for-sale sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than five (5) square feet advertising the property for sale during the construction or any sales period without the approval of the Committee. Such for-sale sign shall be mounted on the ground. For-sale signs suspended from wooden structure or post are permitted but shall not exceed four feet (4') in height and shall be submitted to and approved in advance by the ARC. No For Sale Sign shall be affixed to any tree or to any structure. A for-sale sign advertising an "open house" may be displayed during the period of such open house while there is an owner or real estate agent on the premises. Declarant or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirement and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. All for-sale signs are subject to the approval of the Architectural Review Committee and may be required by the Architectural Review Committee to be removed if, in the sole judgment of the Architectural Review Committee, same is found to be inconsistent with the high standards of the Subdivision. Declarant shall be permitted to display such signs and directional information for the purpose of selling lots as Declarant may determine.
- (q) Rules, regulations and guidelines regarding other signs on any Lot are set forth in the Design Guidelines, including, but not limited to political signs, religious signage, professional advertising signs for contractors and service providers.
- (r) The drying of clothes in full public view is prohibited. The Owners and occupants of any lot at any intersections of streets or adjacent to the Golf Course where the rear yard is visible to full public view shall construct a drying yard or other suitable enclosure to screen, from public view, high equipment that is incident to normal single-family residences, such as a clothes drying equipment, yard equipment and storage piles.

- (s) Except within fireplaces in the main residential dwelling and except for outdoor cooking, no burning of anything shall be permitted anywhere within the Subdivision unless as approved by Declarant or its agents. Provided, further, Declarant, its agents or the Committee shall have the right to prohibit all outdoor fires and to place restrictions on fireplace usage in the main residential dwelling during periods of extreme wildfire danger.
- (t) No carport shall be permitted on a lot unless approved by the Architectural Review Committee.
- (u) No abandoned, derelict or inoperative vehicles may be stored or located on any lot unless visually screened from other lots and from any residential street.
- (v) Domestic water shall be supplied by a community water cooperative system. There are three approved water wells which have either been drilled or for which there is a permit to drill. No individual water well shall be allowed on any respective lot within the subdivision. Water rights shall be owned by the Declarant or by the cooperative and no Owner shall have any right or entitlement to separate ownership of any water rights.
- (w) Firewood shall be neatly stacked and shall be located behind the rear wall of any residential dwelling in a manner intended to shield it from view from adjoining lots or from streets. No more than two (2) cords of wood shall be allowed at any one time to be stored on any lot. Firewood shall be stored at least thirty feet (30') from the residential dwelling except for a modest amount for convenience.
- (x) Landscaping on lots which have been developed with a residential dwelling shall be properly maintained, including trimming, mowing, removal of rubbish and weeds, and in keeping with the landscape plan submitted to and approved by the Architectural Review Committee.
- (y) Fuel or flammable liquids in excess of five (5) gallons may not be stored on any lot unless it is stored in storage containers which meet or exceed NFPA 407.
- (z) Landing of helicopters within the Subjected Area shall not be permitted between the hours of 11:00 PM and 5:30 AM except for emergencies. Landing of helicopters from the hours of 5:30 AM and 11:00 pm shall not be restricted but must strictly comply with all rules and regulations of the Federal Aviation Administration (including, but not limited to FAA AC 150/5390-2C, if applicable) and shall require the express approval by and prior permission of the fee simple title holder of the property upon which any helicopter may land.

Section 2.8 Minimum Floor Area; SFR and Condominiums, Attached Villas and Garden Homes.

- (a) Single Family Detached Residences: In Section A, Section B, and Section C the total heated/air-conditioned living area of the main residential structure as measured to the outside of the exterior walls but exclusive of open porches, garages, patios and detached accessory building, shall be not less than **twenty five hundred (2,500) square feet**. In the event the structure is two (2) stories, the first (1st) floor shall not be less than **two thousand (2,000) square feet** heated/air conditioned living area. In Section D the total heated/air-conditioned living area of the main residential structure as measured to the outside of the exterior walls but exclusive of open porches, garages, patios and detached accessory building, shall be not less than **three thousand (3,000) square feet**. In the event the structure is two (2) stories, the first (1st) floor shall not be less than **two thousand four hundred (2,400) square feet** heated/air conditioned living area.
- (b) Condominiums, Attached Villas and Garden Homes: The total heated/air-conditioned living area of the main residential structure as measured to the outside of the exterior walls but exclusive of open porches, garages, patios and detached accessory building, shall be not less than **eighteen hundred (1,800) square feet**. In the event the structure is two (2) stories, the first (1st) floor shall not be less than **twelve hundred (1,200) square feet** heated/air conditioned living area.

Section 2.9 Building Pad; Setback Restrictions. Each building pad shall be subject to the approval of the Architectural Review Committee and any designee to protect the view corridors or the natural landscaping. Minimum setback requirements will be established by the Committee and shall be reflected in the Design Guidelines.

Section 2.10 Rentals. The rental of any attached or detached single family residence shall be allowed, subject to the following requirements:

**Detached Single Family Residence:**

- Minimum term of one year
- Tenant shall sign an acknowledgement that they are familiar with the CCR's and Design Guidelines
- A copy of the lease shall be provided to the Committee
- The Committee shall be provided with all contact information for the tenant to allow for immediate emergency contact

**Attached Single Family Residence**

- Minimum term of two weeks
- Tenant shall sign an acknowledgement that they are familiar with the CCR's and Design Guidelines
- A copy of the lease shall be provided to the Committee
- The Committee shall be provided with all contact information for the tenant to allow for immediate emergency contact

Section 2.11 Compliance with Provisions of the Alto Golf Estates at the Outlaw Design Guidelines and Restrictions and Rules. Each Owner shall strictly comply with the provisions of the Alto Golf Estates at the Outlaw Design Guidelines and Restrictions and Rules as the same may be promulgated or amended from time to time. Failure to comply with any of the Alto Golf Estates at the Outlaw Design Guidelines and Restrictions and Rules shall constitute a violation of this Fourth Amendment to Declaration, and shall give rise to a cause of action to recover sums due for fines, penalties, Assessments, damages or injunctive relief or both, asserted by the Board or the Committee on behalf of the Association or by an aggrieved Owner. Provided, however, such Rules and Restrictions shall not be in conflict with this Fourth Amendment to Declaration or to any previous ruling of the Committee.

Section 2.12 Commencement of Construction. Each residence constructed on each lot and any other improvements thereto shall be commenced and completed with due diligence promptly after approval by the Committee of the plans and specifications prepared in connection with such construction. The construction of any dwelling on any lot must be completed within eighteen (18) months from date of commencement. For the purposes hereof, completion of construction shall require the completion of all landscaping according the landscape plan approved by the Architectural Review Committee. A Letter of Compliance issued by the Architectural Review Committee shall be the only acceptable evidence of completion of construction. Any variance must have specific written approval from the Architectural Review Committee. Failure to comply with this requirement shall constitute a violation of the Declaration, and shall give rise to a cause of action to recover sums due for fines, penalties, Assessments, damages or injunctive relief or both, asserted by the Board or the Committee on behalf of the Association or by an aggrieved Owner.

Section 2.13 Construction Site Maintenance and Upkeep.

- (a) The homeowner and their respective builders shall have the primary and ultimate responsibility for keeping the construction site in an acceptable neat and orderly manner. "NEAT AND ORDERLY" shall be defined as "a work-site where debris is not unnecessarily unsightly, annoying, a nuisance, a distraction to the neighboring homes, or be an undue eyesore to any prospective buyer interested in the subdivision." This shall also include the responsibility for regular cleanup and hauling off all unusable debris and construction materials, and to keep all materials on site anchored or stored to keep them from blowing onto neighboring properties during normal weather conditions.
- (b) Construction site maintenance and upkeep has been a special problem in other subdivisions where individuals and builders have not felt the commitment or obligation with regard to the nuisance and effect it caused to the neighboring homeowners. As a result, the Architectural Review Committee shall have the right to hire the work done on the site at the expense of the homeowner and/or builder if any homeowner and/or builder shall fail to properly maintain and/or keep up the condition of the property such that it becomes a nuisance to neighboring homeowners or to the Subdivision in general. The Committee will

immediately notify the lot owner by phone at the time they are made aware of the problem, whether such awareness is from a homeowner complaint or observance by any Committee member. Should the problem not be corrected within three (3) days from the lot owner's or builder's receipt (whichever is earlier) of written notification via personal delivery, overnight courier service, or certified mail, return receipt requested, the Committee shall act immediately to correct the problem in the quickest and most practical manner, based on the sole judgment of the Committee. All such actions shall be at the expense of the lot owner and/or builder, and enforced by the mechanics lien if immediate retribution is not made.

- (c) The owner of any Lot upon which construction is being undertaken shall pay a construction deposit in an amount to be determined by the Committee in its sole and absolute discretion from time to time (the "Construction Deposit") to be held until completion of construction. The Construction Deposit (and any interest thereon) shall be released to the Lot owner and/or builder as appropriate at the completion of the construction when the site has been cleaned properly and similar obligations have been met. Should any actions and expenditures be required by the Committee, or the person(s), firm, or company hired by the Committee, to clean the property, it shall be paid from the Construction Deposit if necessary. Any balance of the proceeds, if any, shall revert to the Lot owner and/or builder (as appropriate) upon satisfactory completion. Should the Construction Deposit be inadequate to cover the costs, the Lot owner shall be responsible for any shortfall and shall promptly make such payment.
- (d) The owner of any Lot upon which construction is being undertaken shall pay a road reserve fee in an amount to be determined by the Committee (and/or the Association) in its sole and absolute discretion from time to time to the Committee (the "Road Reserve Fee") shall be paid to the Committee and/or to the Association upon final approval of plans. The Road Reserve Fee shall be to compensate for damage to roads and for future road repairs resulting from oversized delivery vehicles and other construction traffic.
- (e) Portable toilet facilities shall be supplied at the beginning of construction for each site, and shall remain in place throughout the construction cycle. Placement of portable toilet facilities must be kept out of sight where possible. Should a builder not make immediate and direct arrangements for such facilities, the Committee will phone the purchaser or builder to have portable facilities sent to the site. Should the purchaser or builder fail to provide portable toilet facilities within two (2) days from the purchaser's or builder's receipt (whichever is earlier) of written notification via certified mail, return receipt requested, the Committee will make arrangement for those facilities. All cost incurred will be at the expense of the purchaser and/or builder as appropriate. Deposited funds

will be applied and, if necessary, a mechanics lien will be filed against the property to collect the funds committed by the Committee.

- (f) The Owner and the builder shall be responsible for ensuring that workmen and subcontractors do not drive or intrude upon adjacent lots, create undue debris or disturbance to neighbors, do not alter drainage patterns, do not damage trees or natural vegetation on adjacent lots or in the Community, or cause construction debris, mud, or dirt to be tracked on roadways and in the surrounding area. The use of erosion and sedimentation controls is required and the use of chat or gravel in transition areas from the roadway to the construction site is encouraged to minimize the transfer of dirt, mud and construction materials from the construction site to the roadways. Dirt, mud and construction materials shall not be removed by the use of a scraper, bobcat bucket or similar mechanical devices which the Committee determines may harm or compromise the roads.
- (g) The lot owner shall be responsible for ensuring the builder is knowledgeable of all the covenants related to the construction of the project and the conduct of the builder's employees.
- (h) Additional requirements, obligations, and responsibilities associated with construction are contained in the Design Guidelines. Such additional requirements, obligations, and responsibilities are in addition to those stated herein and shall be construed to be in harmony with and not in conflict with these requirements, obligations, and responsibilities.

Section 2.14 Utilities. Except as to special lighting or other aerial facilities which may be required by the County or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial or above-ground utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Subdivision whether upon individual lots, easements, streets or right-of-way of any type, either by the utility company or any other person or entity (including, but not limited to, water, sewer, gas, electric and telephone). These utilities shall be buried underground unless otherwise required by public utility. This clause does not apply to public utility lines, which may otherwise already be in place. The Association shall be responsible for maintaining the streetlights, if constructed, including maintenance, replacement and utility costs. In the event that the Association, Committee or Declarant, including successors, fail or refuse to maintain, replace, and pay utility costs, then the County may assume the duty at any time. Upon assuming such obligations the County may levy an assessment upon each lot for the cost.

Section 2.15 Dark Sky. Lot Owners and builders shall utilize exterior light fixtures, light bulbs and lighting which minimizes ambient light in order to preserve views of the night sky. The Committee shall have the right to review and approve all exterior lighting as part of its review process. Lighting intended to facilitate helicopter landings shall be directed upwards, shall not



shine towards any adjacent lot, and shall not be continuously illuminated for more than one (1) hour after midnight.

Section 2.16 Water Conservation. In home construction and occupation, use of water conservation apparatus to conserve water, including showers, toilets, water softeners, faucets, shower heads, air conditioners, hot water heaters, dishwashers shall be used.

Section 2.17 Landscaping Requirements. Use of landscaping to conserve water, such as limited types of tree, lot clearing, retention of rain water pursuant to approved Rainwater Harvesting Systems, subsurface irrigation systems and use of mulch shall be used and approved by the Architectural Review Committee. All lot Owners are restricted to eight hundred (800) square feet of drought resistant grass.

Section 2.18 Green Belt Easements/Space. Green Belt and Drainage easements have been established by the developer that meander through the existing vegetation and trees with the express intention of minimizing the amount of disruption and clearing of vegetation and trees in specific areas. It is the sole responsibility of the Lot owner to maintain these easements as required by the appropriate Authorities.

Section 2.19 Compliance With All Ordinances, The Final Plat and Restrictive Covenants. Notwithstanding any provisions contained herein to the contrary, all of the fences, landscaping and houses constructed on the lots shall be constructed in conformity with applicable zoning ordinances, the Plat (as amended), the restrictive covenants contained in this Fourth Amendment to Declaration (and any further amendments hereto), and the Design Guidelines.

Section 2.20 Compliance With Tree Removal, Replacement and Protection Code. Forest health is a particular concern in the Subdivision in order to promote healthy tree growth and to minimize dead or diseased trees and brush and ladder fuel which may increase fire risk. It is the responsibility of the individual lot Owners to aggressively manage dead or diseased trees, manage and cut brush, and other flammable organic material on their lots, including, at a minimum, complying with the fire and protection policies of Lincoln County or the State of New Mexico including trimming trees, removing dead trees, and clearing brush. The Architectural Review Committee shall have the authority to provide written notice to any lot owner if unacceptable conditions exist on their lot and such lot owner shall immediately undertake to remedy such situation.

Section 2.21 Liquid Waste Management. All lots must have an aerobic septic systems which shall be inspected and otherwise comply with EPA or other applicable jurisdictional requirements.. The Architectural Review Committee shall approve of any system and its location prior to installation.

**ARTICLE III**  
**ARCHITECTURAL REVIEW COMMITTEE**

Section 3.1 Appointment. Declarant shall designate and appoint an Architectural Review Committee (herein called the "Committee") composed of one or more, but not more than seven individuals, each generally familiar with the residential community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design

standards within the Subdivision. The Committee shall use its best efforts to promote and ensure a high level of taste, design quality, harmony and conformity throughout the Subdivision consistent with this Fourth Amendment to Declaration.

Section 3.2 Successors. In the event of the death, resignation or removal by Declarant of any member of the Committee, the remaining member(s) shall appoint a successor member. In default of such appointment, Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Fourth Amendment to Declaration.

Section 3.3 Authority. No building, fence, wall or other structure shall be commenced, erected, placed, maintained or altered on any lot, nor shall any exterior painting of, exterior addition to, or alteration of such items be made until all plans and specification and a plat plan have been submitted to and approved in writing by a majority of the members of the Committee as to:

- (a) Quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets;
- (b) Conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other lots in the Subdivision;
- (c) Location with respect to topography and finished grade elevation and effect of location and use on neighboring lots, improvements and drainage arrangements; and
- (d) The other standards set forth within this Fourth Amendment to Declaration (and any amendments hereto), the Design Guidelines, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.
- (e) The Committee is authorized and empowered to consider, review and approve any and all aspects of construction and landscaping which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more lot Owners or the general value of lots in the Subdivision.

In addition to the foregoing, the lot owner shall also pay to the Committee at the time of submission of plans, a non-refundable plan review fee in an amount to be determined by the Committee in its sole and absolute discretion from time to time (the "Plan Review Fee").

Section 3.4 Design Guidelines. The Committee promulgated Design Guidelines which are being amended by the First Amendment to Design Guidelines which are being filed concurrently with this Fourth Amendment to Declaration (the "Design Guidelines"). The Design

Guidelines are intended to supplement and define the requirements set forth in this Fourth Amendment to Declaration. The Committee has the full and complete authority for approval of any construction on the Lots and this Declaration shall prevail in the event of any apparent conflict between the Design Guidelines and this Fourth Amendment to Declaration. The Design Guidelines (and any amendments thereto) shall be recorded in the Public Records of Lincoln County, New Mexico and each Owner is responsible to insure that they have the most recent and current version of the Design Guidelines.

Section 3.5 Procedure for Approval. Final plans and specifications shall be submitted in duplicate to the Committee along with the Plan Review Fee. The plans and specification shall show the nature, kind, shape, height, materials (including colors) and location of all improvements. A plot plan showing the location of the major trees on the lot, the location of the house relative to the existing trees, any planned or proposed outbuildings, if any, the proposed location of the driveway, and light posts shall be approved by the Committee prior to the commencement of any construction or any modifications to the primary dwelling, outbuilding, fencing and related construction and landscaping. All roofing materials to be used on improvements constructed on lots shall be submitted to the Committee for approval. The documents shall specify any requested variance from the Committee approved pad location, garage location or any other requirement set forth in this Fourth Amendment to Declaration or in the Design Guidelines. Article IX of the Design Guidelines contain more extensive information regarding the application and approval process, including forms, procedure and similar information. For the purposes hereof, the procedures set forth in the Design Guidelines shall govern.

Section 3.6 Standards. The Committee shall have the sole discretion with respect to taste, design and all standards specified herein, to avoid peculiar or inappropriate structures from being built in the Subdivision. The Committee shall also have the authority to specify roof slope, to specify that fireplaces and chimney flues be covered with non-reflective material or paint, to prohibit the use of lightweight composition roof material, and generally to require that any plans meet the standards of the existing improvements on neighboring lots. In addition to the Design Guidelines, the Committee may from time-to-time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Fourth Amendment to Declaration.

Section 3.7 Termination; Continuation. The Committee appointed by Declarant shall cease to exist on the date on which all the members of the Committee file a document declaring the termination of the Committee. Notwithstanding the above provision, at any time after the termination of the Committee, the recorded Owners of a majority of the lots in the Subdivision shall have the authority to record an instrument which provides for a committee elected by the homeowners to continue the functions of the Committee, which instrument shall establish election or appointment procedures whereby the homeowners' Committee members shall be chosen and a notice procedure whereby all homeowners in the Subdivision will receive notice of such procedures. If there is no Committee or homeowners' Committee, no approval by the Committee or homeowners' Committee shall be required under this Fourth Amendment to Declaration; variations from the standards set forth in this Fourth Amendment to Declaration shall be made in accordance with the general development standards as reflected in the plans, construction materials, landscaping and other matter approved by the Committee or homeowners' Committee during their periods of control.

Section 3.8 Non-Liability of Committee. **THE COMMITTEE WILL NOT BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE COMMITTEE'S DUTIES.**

**ARTICLE IV**  
**COMMON PROPERTY SPECIAL FENCING AND LANDSCAPING**

Section 4.1 Fences, Walls and Sprinkler Systems. After the recording of this document, Declarant shall have the right to erect, install, maintain, repair and/or replace fences, sidewalks, entry features and gates, walls, and/or sprinkler systems within the Common Properties.

Section 4.2 Landscaping. Declarant shall have the right to grade, plant and/or landscape and maintain, repair, replace, and/or change such grading, planting and landscaping for the Common Properties.

Section 4.3 Easement. Declarant shall have, and hereby reserve, the right and easement to enter upon the Common Properties for the purpose of exercising the discretionary rights set forth above.

Section 4.4 Declarant's Discretion. Notwithstanding any provisions herein to the contrary, Declarant shall never be obligated to erect, install, maintain, repair or replace any fences, sidewalks, entry features, walls, sprinkler systems, grading, planting or landscaping on any lots or within the Common Properties.

**ARTICLE V**  
**FORMATION OF HOMEOWNERS ASSOCIATION**

Section 5.1 Formation of Association. Unless otherwise determined by the Declarant, the Association shall not be formed and incorporated until seventy-five percent (75%) of the lots have been sold to individual homeowners. The Association shall be governed by the terms and conditions of this Fourth Amendment to Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and the Bylaws and any subsequent amendments hereto.

Section 5.2 Committee to Act as Association. Prior to the formation of the Association the Committee shall perform all functions of the Association. To the extent that this Fourth Amendment to Declaration shall specify functions or responsibilities of the Association, the Committee shall undertake to perform those functions prior to and in advance of the formation of the Association.

Section 5.3 Sub-Associations. Subordinate homeowner's associations (including condominium associations) (each, a "Sub-association") shall be permitted for separate areas of the Subdivision for gated areas, condominiums, townhomes, villas, etc. Such Sub-associations may assess the lots within the area to which such Sub-association is applicable any dues or assessments for costs or expenses which are unique, exclusive and singular to such area. Membership in any Sub-association is not mutually exclusive to membership in the Association

and every lot (regardless of membership in any Sub-association) shall be a member of the Association (when formed).

**ARTICLE VI**  
**MEMBERSHIP AND VOTING RIGHT IN THE ASSOCIATION**

Section 6.1 Memberships. Every Owner of a lot shall automatically be a Member of the Association upon its formation. Membership shall be appurtenant to and may not be separated from ownership of any lot, which is subject to this Fourth Amendment to Declaration. Each member shall be entitled to one (1) vote for each lot in which they hold interest required for membership.

Section 6.2 Quorum, Notice and Voting Requirements.

(a) Subject to the provisions of paragraph (c) of this section, an action taken at a meeting of those Members shall require the assent of the majority of all of the votes of those who are voting in person or by proxy, regardless of class, at a meeting duly called, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance.

(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

The presence at the initial, or other meeting of Members entitled to votes, or of proxies entitled to votes, a majority of the votes of all Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Bylaws or this Fourth Amendment to Declaration or as provided by the laws of the State of New Mexico. If the required quorum is not present or represented at the meeting, one additional meeting may be called, subject to the notice requirement herein set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however that no such second meeting shall be held more than sixty (60) days following the first meeting.

(c) As an alternative to the procedure set forth above, any action referred to in Paragraph (a) of this section may be taken without a meeting if a consent in writing, approving of the action to be taken, shall be signed by a majority of Members entitled to vote.

(d) Except as otherwise specifically set forth in this Fourth Amendment to Declaration, notice, voting and quorum requirements for all action to be taken by the Association shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

**ARTICLE VII**  
**THE COMMON PROPERTIES AND PROPERTY RIGHTS THEREIN**

Section 7.1 Common Properties.

- (a) For the purpose of these restrictions, Common Properties that are expected to be maintained by the Association include, but are not limited to streets and roads, landscape and signage features at the front of the Subdivision along Lincoln Hills Drive as shown in the recorded Final Plat, or any Amended Plat, and any other property within the Subdivision related to the mutual enjoyment or safety of the Owners of the Lots and designated as Common or Public Property on the recorded Final Plat or Amended Plat(s) of the Subdivision.
- (b) In the event that the Association, the Committee, or Declarant (if applicable), including their respective successors and assigns (collectively, the "Association"), shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder or shall fail to exercise or enforce any other maintenance right or obligation, the County shall have the right, but not the obligation, and may assume the duty of performing all such maintenance obligations at any time, upon giving written notice to the Owners, or at any time after the expiration of ten (10) days after receipt by the Association of written notice from the County specifying in detail the nature and extent of the failure to maintain without such failure being remedied, whichever notice shall be deemed appropriate by the County. Upon assuming such maintenance obligations, the County may levy an assessment upon each Lot on a pro rata basis for the cost of such maintenance, notwithstanding any other provisions contained in this Fourth Amendment to Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period, the County has a right and assumes the maintenance obligations set forth herein, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the County to exercise its maintenance obligations shall cease and terminate when the Association shall present to the County such reasonable evidence of its willingness and ability to resume such maintenance. In the event the County assumes the duty of performing the maintenance obligations of the Association as provided herein, then the County, its agents, representatives and employees shall have the right to access to and over the Common Properties for the purpose of maintenance, improvement, and preservation; and in no event, and under no circumstances, shall the County be liable to the Association or any Owner, Resident, or Member or their respective heirs, executors, administrators, devisees, personal representatives, successors, and assigns for negligent acts or construction relating in any manner to maintenance, improvement, and preservation; or to any Owner, Resident, Member, the Association, or any other person for failure to perform such maintenance.

- (c) The Committee shall have the duty to enforce these Covenants and maintain all Common Properties in the Subdivision and shall have the right, power, and authority to do any act which is consistent with or required by the provisions of these Covenants or the Bylaws, whether the same be expressed or implied, including but not limited to the power to levy and collect Assessment (of whatever nature) for the maintenance, repair, or replacement of the Common Properties existing in the Subdivision.
- (d) After the formation of the Association, maintenance of the landscaping, easements, Common Properties and signage easements will be the responsibility of the Association. Further, at the formation of the Association the Declarant will convey all of the Common Properties to the Association.
- (e) The provision hereof in regard to the duty of the Committee and/or the Associations and/or its Board of Directors to maintain all the Common Properties as set out herein, to enforce the assessment procedure set out herein, and to enforce the rights extended to the County as set out herein with regard to the Common Properties, shall not be revoked or amended without additional approval of the County. Furthermore, no amendment or revocation of any provision of this Fourth Amendment to Declaration (or any amendment hereto) that in any way affects the rights and authority of the County shall be made or approved without prior written consent of the County.

Section 7.2 Easement for Golf Course Maintenance. In addition to the easements and rights reserved in Article IV, Declarant, its successor or assigns hereby reserves easements ("Golf Course Land Easement"), including those shown in the recorded final Plat and any Amended Plat, to and for the benefit of the Club to erect, install, maintain, repair, landscape and/or replace cart paths, building facilities, fences, walls, irrigation, and/or sprinkler systems associated with the Golf Course and all improvements thereon.

Section 7.3 Members' Easements of Enjoyments. Subject to the provisions of Section 7.4 of this Article, every Member and every tenant of every Member, who resides on a lot, and each individual who resides with either of them, respectively, on such lot shall have a non-exclusive right and easement to the use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties.

Section 7.4 Extent of a Member's Easements. The rights and easements of enjoyment created by Section 7.3 shall be subject to and limited by the following:

- (a) The Declarant's conveyance of the Golf Course to the Club and the Declarant's non-recourse assignment of the Golf Course maintenance obligation to the Club as set forth in Section 7.2 above.

- (b) The right of the Declarant and the Association (or the Committee, prior to formation of the Association) s to prescribe rules and regulations governing the use, operation and maintenance of any designated Common Properties.
- (c) The right of the Association to enter into and execute contracts with parties (including the Declarant or an affiliate of the Declarant) for the purpose of providing maintenance for all or a portion of the Common Properties or providing materials or services consistent with the purpose of the Association.
- (d) The right of the Association, as may be provided in its Bylaws, to suspend the voting rights of any member and to suspend the right of any individual to use any of the Common Properties for any period during which any assessment against a lot owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations or this Fourth Amendment to Declaration (or any amendment hereto).
- (e) With respect to any and all portions of the Common Properties, until formation and incorporation of the Association, Declarant shall have the right and option to alter, improve, landscape and/or maintain the Common Properties.

**ARTICLE VIII**  
**ADMINISTRATION OF COVENANTS; ENFORCEMENT**

Section 8.1 Administration of Covenants. All Owners shall comply with the Covenants, Conditions and Restrictions established by this Fourth Amendment to Declaration and with the requirements set forth in the Design Guidelines. The Association (and the Committee, prior to formation of the Association) shall have the right and responsibility to administer the requirements set forth herein and in the Design Guidelines.

Section 8.2 Violation; Notice. In the event of a determination of a violation of this Fourth Amendment to Declaration or the Design Guidelines, Owner shall be provided a written notice of such violation ("Violation"). Thereafter, Owner shall have thirty (30) days to cure such Violation (the "Cure Period"). Provided, however, the Cure Period may be extended at the discretion of the Committee in the event that such cure cannot be completed within the Cure Period as long as Owner has undertaken such cure and is diligently prosecuting its completion. In the event that Owner has not cured such Violation and the Committee has not extended the Cure Period in writing, Owner shall be subject to the Penalties set forth in Section 8.3 below.

Section 8.3 Penalties. In the event that Owner has not cured such Violation and the Committee has not extended the Cure Period in writing, the Committee shall have the right to impose the fines set forth in the Design Guidelines as well as the following fines, penalties, and enforcement measures:

- (a) A fine in an amount up to \$500 plus \$100/day until the Violation has been cured;



- (b) The right to undertake to cure the Violation in which case the costs and expenses thereof shall be charged to the Owner; or
- (c) A combination of, or both, of the above.

Section 8.4 Creation of the Lien and Personal Obligation of Penalties. Declarant, for each lot owned by it, hereby covenants and agrees, and each purchaser of any lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the lot), to pay to the Penalties or any charges. The Penalties, together with the interest thereon, attorney's fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such lot at the time when the Penalties were assessed. Existing obligations of an Owner to pay Penalties and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Penalties were assessed; provided, however, any such foreclosure proceeding or action at law shall not relieve or exempt such new Owner from this Fourth Amendment to Declaration or the Design Guidelines.

Section 8.5 Non-Payment; Lien.

- (a) The payment of Penalties shall be considered delinquent beginning ten (10) days after the date of imposition. If any Penalty or part thereof is not paid within ten (10) days after the date of imposition, the unpaid amount of such Penalty shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of: (i) eighteen percent (18%) per annum; or (ii) the maximum lawful rate.
- (b) The unpaid amount of any Penalty not paid by the delinquency date shall, together with the interest thereon as provided in Section 8.8(a) hereof and the cost of collection thereof, including reasonable attorney's fees, become a continuing lien and charge on the lot of the non-paying Owner, which shall bind such lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the lot, except only for tax liens and the lien of a bona fide first mortgage now or hereafter placed on such lot. A subsequent sale or assignment of the lot shall not relieve the Owner from liability for any Penalty made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Penalty. The Committee (or the board of the Association, if formed) shall have the power to subordinate the lien securing the payment of any Penalty rendered by the Association to any other lien. Such power shall be entirely discretionary with the Committee (or the board of the Association, if formed). As herein before stated, the personal obligation of the Owner incurred at the time of such Penalty to pay such Penalty shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for

unpaid Penalty shall not be affected by any sale or assignment of a lot and shall continue in full force and effect. No Owner may exempt himself from liability for the Penalty by non-use of the Common Properties or abandonment of his/her/it's lot.

To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the lot covered by such lien and a description of the lot covered by such a lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the Lincoln County Clerk, New Mexico.

(c) Remedies. The lien securing the payment of the Penalty shall attach to the lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Penalty and/or for the foreclosure of the aforesaid lien. In any foreclosure preceding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Penalty there shall be added to the amount of any such Penalty:

- (i) the interest provided in this Section;
- (ii) the cost of preparing and filing the Complaint in such action;
- (iii) the reasonable attorneys; fees incurred in connection with such action;
- (iv) any other costs of collection; and in the event a judgment is obtained, such judgment shall include interest on the Penalty as provided in this Section and a reasonable attorney's fee to be fixed by the court, together with costs of the action; and
- (v) Each Owner, by acceptance of a deed to a lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to New Mexico law, if applicable, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner

who is in default in payment of any Penalty in accordance with the Declaration and/or the Bylaws.

- (d) Notice to Mortgagees. The Association may, and upon written request of any Mortgagee holding a prior lien on any part of the Properties, report to said mortgagee any Penalty remaining unpaid for longer than thirty (30) days after the delinquency date of such Penalty.

Section 8.6 Subordination of the Lien to Mortgages. The lien securing the payment of the Penalty shall be subordinate and inferior to the lien of any bona fide first lien mortgage now or hereafter recorded against any lot; provided, however, that such subordination shall apply only to the Penalties which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage. Such sale shall not relieve the new Owner of such lot from liability for the amount of any Penalty thereafter becoming due nor from the lien securing the payment of any subsequent Penalty.

Section 8.7 Exempt Property. All properties dedicated and accepted by the local public authority and devoted to public use shall be exempted from the Penalties, charges and liens created in Section 8.3.

Section 8.8 Estoppel Information from Board with Respect to Penalties. The Board shall upon demand at any time furnish to any Owner liable for an Penalty, a certificate in writing signed by an officer of the Association, setting forth whether said Penalty has been paid. Such certificate shall be conclusive evidence of payment of any Penalty therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates.

## **ARTICLE IX COVENANTS FOR ASSESSMENTS**

Section 9.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each lot owned by it, hereby covenants and agrees, and each purchaser of any lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the lot), to pay to the Committee or upon its formation, to the Association (or to an entity or collection agency designated by the Association) the annual maintenance assessments or charges and, at the discretion of the Association, special assessments (as specified in Section 9.3 hereof), such assessments to be fixed, established and collected from time to time as herein provided. The annual maintenance assessments described in this Section 9.1 (hereinafter, the "Assessment" or the "Assessments"), together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each lot against which any such Assessment is made. The Assessments, together with the interest thereon, attorney's fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such lot at the

time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of Common Properties or abandonment of his/her/it's lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

Section 9.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for: (i) improving, repairing, landscaping and maintaining the Common Properties including streets and street lights; (ii) paying the cost of labor, equipment and materials required for, and management and supervision of, the Common Properties including streets and street lights; (iii) carrying out the power and duties of the Board of Directors of the Association as set forth in this Fourth Amendment to Declaration and the Bylaws; (iv) carrying out the purposes of the Association as stated in its Articles of Incorporation; and (v) carrying out the powers and duties relating to the Architectural Review Committee, after Declarant has delegated or assigned such powers and duties to the Association.

Section 9.3 Annual Maintenance Assessments.

- (a) The Board of Directors shall determine the amount of the annual maintenance assessments for each year, which assessments may include a reserve fund for working capital and for maintenance, repairs and replacements of the Private Streets, and Common Properties. (See Section 9.5 below regarding the Board's discretion to have annual maintenance assessments payable monthly, quarterly, semi-annually or annually.) For the purposes hereof, the Committee shall function as the Board of Directors prior to the formation of the Association and any reference herein to the Board of Directors or to the Board shall be deemed to be a reference to the Committee, as appropriate or necessary.
- (b) Subject to the provisions of Section 9.3(c) hereof, the rate of annual maintenance assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the annual maintenance assessments for any year at a lesser amount than that of the previous year.
- (c) An increase in the rate of the annual maintenance assessments as authorized by Section 9.3(b) hereof in excess of twenty-five percent (25%) of the preceding year's annual maintenance assessments must be approved by the Members in accordance with Section 6.2 hereof.
- (d) When the annual maintenance assessment is computed for lots, all or a portion of such annual maintenance assessment shall be payable to the Association by the Member, subject only to Section 9.3(a) above allowing for prorated monthly installments.

- (e) Notwithstanding anything herein contained to the contrary, the first annual maintenance assessment chargeable against any lot for which a full assessment is payable shall not exceed \$75.00 per month.
- (f) The annual maintenance assessment shall include a reasonable amount, as determined by the Members of the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of streets and all or a portion of the Common Properties and for general operating purposes including but not limited to accounting fees, bookkeeping fees, landscaping, insurance, wages, capital expenditures, liabilities of any nature, renovations, repays, management, attorneys' fees, court costs and all other reasonable expenses for the benefit of the Association, the Subdivision and all lot Owners as determined in the sole discretion of the Association thru its Board of Directors. All amounts collected as reserves, whether pursuant to this section or otherwise, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are segregated from and not commingled with any other funds of the Association.

Section 9.4 Uniform Rate of Annual Maintenance Assessments. Annual maintenance assessments must be fixed at a uniform rate for all lots, and is payable as set forth herein.

Section 9.5 Date of Commencement of Assessments; Due Dates; No Offsets. The annual maintenance assessments provided for herein shall commence on the date fixed by the Committee or the Board of Directors (as the case may be) to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarter-annually, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Committee or Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of the assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 8.3 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason. The Committee shall have the right to determine the amount of any assessments and the date of commencement of such assessments prior to the formation of the Association.

Section 9.6 Special Assessments. The Association Board of Directors (or the Committee prior to the formation of the Association) may vote on and require from each lot owner on an equal basis, based on the number of lots owned, or the size or acreage of property owned by a lot Owner, as is equitable in the discretion of the Board, special assessments. Special Assessments are payable in cash or installments as determined by the Board. Special Assessments may be imposed for any expense of the Association extraordinary in nature, whether created by reason of legal environmental, acts of God, matters determined appropriate in the discretion of the Board. A vote of two-thirds (2/3) of all Members/lot Owners including the Declarant, shall

nullify any Special Assessment, subject only to a court ruling in a court of competent jurisdiction, instituted by the Association, the Declarant and/or any lot Owner(s).

Section 9.7 Duties of the Board of Directors with Respect to Assessments.

- (a) The Board of Directors (or the Committee prior to the formation of the Association) shall fix the date of commencement and the amount of the annual maintenance assessment and special assessments against each lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.
- (b) Written notice of all assessments shall be delivered by mail to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner to the Association.
- (c) The omission of the Board of Directors (or the Committee prior to the formation of the Association) to fix the assessments within the period of time set forth above for any year or other time period shall not be deemed a waiver of modification in any respect of the provisions of this Fourth Amendment to Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

The Board of Directors (or the Committee prior to the formation of the Association) shall upon demand at any time furnished to any Owner liable for said assessment a certificate signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

Section 9.8 Non-Payment Assessment.

- (a) "Delinquency Date" as Specified in the Notice of Such Assessment. The payment of Assessments shall be considered delinquent beginning the sixty day after the due date as defined in Section 8.5 hereof, said sixth date being defined as the Delinquency Date. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of: (i) eighteen percent (18%) per annum; or (ii) the maximum lawful rate.
- (b) Lien. The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 8.7(a) hereof and the cost of collection thereof, including reasonable

attorney's fees, become a continuing lien and charge on the lot of the non-paying Owner, which shall bind such lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the lot, except only for tax liens and the lien of a bona fide first mortgage now or hereafter placed on such lot. A subsequent sale or assignment of the lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As herein before stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a lot and shall continue in full force and effect. No Owner may exempt himself from liability for the Assessments by non-use of the Common Properties or abandonment of his/her/it's lot.

- (i) To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the lot covered by such lien and a description of the lot covered by such a lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the Lincoln County Clerk, New Mexico.
- (c) Remedies. The lien securing the payment of the assessments shall attach to the lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure preceding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:
- (i) the interest provided in this Section;
  - (ii) the cost of preparing and filing the Complaint in such action;
  - (iii) the reasonable attorneys' fees incurred in connection with such action;

- (iv) any other costs of collection; and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorney's fee to be fixed by the court, together with costs of the action; and
  - (v) Each Owner, by acceptance of a deed to a lot, hereby expressly vests in the Association or its agents or trustees the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to New Mexico law, if applicable, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment in accordance with the Declaration and/or the Bylaws.
- (d) Notice to Mortgagees. The Association may, and upon written request of any Mortgagee holding a prior lien on any part of the Properties, report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment.

Section 9.9 Subordination of the Lien to Mortgages. The lien securing the payment of the Assessment shall be subordinate and inferior to the lien of any bona fide first lien mortgage now or hereafter recorded against any lot; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage. Such sale shall not relieve the new Owner of such lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

Section 9.10 Exempt Property. All properties dedicated and accepted by the local public authority and devoted to public use shall be exempted from the assessments, charges and liens created in Section 9.3.

Section 9.11 Estoppel Information from Board with Respect to Assessments. The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates.

**ARTICLE X**  
**GENERAL POWERS AND DUTIES**  
**OF BOARD OF DIRECTORS OF THE ASSOCIATION**



Section 10.1 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors. The Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association and shall have the powers and duties set forth in this Fourth Amendment to Declaration, the Design Guidelines, the Articles of Incorporation and Bylaws. Prior to the formation of the Association the Committee shall operate in place of the Board of Directors.

**ARTICLE XI**  
**USE OF COMMON PROPERTIES**

The Common Properties may be occupied and used as follows:

Section 11.1 Restricted Action by Owners. No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association. No waste shall be committed in or on the Common Properties.

Section 11.2 Damage to the Common Properties. Each Owner shall be liable to the Association for any damage to the Common Properties caused by negligence or willful misconduct of the Owner or such Owner's family, guests, pets, tenants or invitees.

Section 11.3 Rules of the Board. All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, without bond, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees, incurred by the Association in connection therewith.

Section 11.4 Maintenance of Common Properties. All landscaping and improvements placed or erected on the Common Properties by Declarant shall be owned and maintained by the Association.

**ARTICLE XII**  
**EASEMENTS**

Section 12.1 Ingress and Egress by the Association. The Association shall, at all times, have full rights of ingress and egress over and upon each lot for the maintenance and repair of each lot and the Common Properties in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any lot shall be made with as little inconvenience to the Owner as practical, and any damage caused by the Association's entry, other than damages caused by the Owner, shall be repaired by the Association at the expense of the Association.

Section 12.2 Ingress and Egress by the Club. The Club shall, at all times, have full rights of ingress and egress over and upon each lot for the maintenance and repair of the Golf Course in accordance with the provisions hereof, and for the carrying out by the Club of its functions, duties and obligations hereunder; provided, that any such entry by the Club upon any lot shall be made with as little inconvenience to the Owner as practical, and any damage caused by the Club's

entry, other than damages caused by the Owner, shall be repaired by the Club at the expense of the Club.

Section 12.3 Reservation of Easements. Easements over the Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by the Declarant, together with the right to grant and transfer same.

**ARTICLE XIII**  
**CLUB MEMBERSHIP AND OTHER CLUB MATTERS**

Section 13.1 Special Memberships.

- (a) The memberships formerly issued to and held by those persons who were owners of Lots prior to the date of the Second Amendment to Declarations (“Outlaw Memberships”) are canceled, extinguished and of no further force or effect. No further Outlaw Memberships shall be issued to Owners.
- (b) A Special Membership shall be issued to each existing Lot owner and to each subsequent purchaser of a Lot. Each Special Membership shall be attached and appurtenant to the Lot owned by the holder thereof and shall be transferable only upon transfer of the Lot to which it relates. No Lot or residential building unit in the Subdivision shall be transferred, sold, or conveyed without a Special Membership being appurtenant thereto and transferred and identified therewith. In the event the seller of any Lot shall fail or refuse to transfer to the purchaser of such Lot the Special Membership the seller holds with respect to such Lot, the Club shall issue a new certificate of Special Membership respectively to the purchaser, and thereupon the old Special Membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.
- (c) The Special Membership shall entitle the holder thereof (together with those persons also entitled to such privileges as provided in Article III, Section 1,a of the Club Bylaws) to all of the rights, privileges and obligations of a Regular Membership of the Club, as the same may be defined from time to time by the Board of Directors of the Club, specifically including the use of all Club golf facilities and voting rights. No initiation fees or transfer fees will be charged with respect to the issuance by the Club of Special Memberships to the initial purchasers of lots in the Subdivision. Transfers of Subdivision Lots, together with attached Special Memberships, to third parties shall be subject to the then prevailing Regular Membership transfer fees charged by Club. As a condition precedent to receiving a Special Membership, all such recipients shall agree in writing to be bound by the Articles of Incorporation and Bylaws of the Club. Any Owner who refuses to execute these documents will not be afforded any privileges at Club facilities, including the Golf Course.
- (d) References in Section 4 of Article III and elsewhere in the Club Bylaws to Alto Property and Alto Lots or residential units or words of like import shall be deemed

to include, where applicable, the Subdivision and Subdivision Lots as well. References to "Lots" herein and elsewhere in the Second Amendment to Declaration (and any subsequent amendments hereto) shall include residential units located on Lots.

- (e) A Special Membership shall be issued to only one individual Owner and his or her spouse. If the Owner or purchaser is a corporation, one membership shall be issued to one individual officer of said corporation and his or her spouse, designated in writing by such corporation. All Owners and their guests shall be obliged to abide by the reasonable rules and regulations of the Club, the Golf Course and other Club facilities.
- (f) The Owner of record of each Special Membership Lot in said Subdivision shall pay to the Club the Regular Membership dues imposed in accordance with the Club By-Laws, as same may be amended from time to time. In the event any such dues become delinquent for thirty (30) days, the Club may send a written notice of such delinquency to the Lot Owner by regular mail addressed to his or her last address as shown on the records of the Club; and, if the delinquent dues are not paid within thirty (30) days after such notice has been mailed, the amount of such delinquent dues shall be and become a lien on the said Lot when the Club has caused to be filed or recorded in the office of the Recorder of Lincoln County an affidavit of the nonpayment of such dues or assessments.
- (g) To the extent not inconsistent with the provisions of this Article XII, the provisions of Sections 8.8, 8.9 and 8.11 of this Fourth Amendment to Declaration shall be incorporated in this Article XII by reference.

Section 13.2 Application for Club Membership. As set forth in Section 12.1, ownership of each lot includes as an appurtenance a Special Membership with full golf privileges in the Club. Upon signing of a purchase agreement for the purchase of a lot in the Subdivision, the prospective owner shall submit such applications and sign such membership agreements as may be required by the Club. Such application or membership agreement shall not create any obligations to the Club by such prospective owner until such time as such prospective owner has purchased a lot in the subdivision.

Section 13.3 Mandatory Special Membership Dues. Pursuant to each Owner's Special Membership, the Club shall be entitled to charge and collect from each Owner dues on a monthly or annual basis ("Special Membership Dues"). The Special Membership Dues shall be payable by each Owner to the Club without set off, diminution or abatement for any reason.

Section 13.4 Lien for Special Membership Dues. The Club shall have a lien against each lot to secure payment of delinquent Special Membership Dues and other charges, as well as interest at a rate to be set by the Club (subject to the maximum interest rate limitations of New Mexico law), costs of collection and reasonable attorney's fees. Such lien shall be superior to all other liens, except: (i) the lien of all taxes, bonds, assessments, and other levies which by law would be superior; and (ii) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

increase based upon factors related solely to the Club. Additionally each Owner acknowledges that pesticides, herbicides, fungicides, chemicals and fertilizers may be applied to the Golf Course throughout the year and that reclaimed water, treated waste water or other sources of non-potable water or "grey water" may be used for irrigation of the golf courses.

Each Owner hereby assumes such risks of owning property adjacent to a golf course and forever waives and relinquishes, and agrees not to institute any action or suit at law or in equity nor to institute or prosecute, any claim, demand or compensation against the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); the Club or its successors, successors-in-title, or assigns; any Builder or contractor (in their capacities as such); any officer, director, member, manager, or partner of any of the foregoing, or any officer, director, member or manager of any partner of the foregoing for or on account of any damages, loss, or injury either to person or property, or both, resulting directly or indirectly from the design, construction, operation, maintenance and/or use of the Golf Course. Each Owner hereby agrees to take any necessary steps to maintain adequate hazard and other insurance policies to protect such Owner and such Owner's family, guests, invitees, agents and employees against all such risks associated with the golf courses or other Private Amenity.

Neither the Association nor any Owner shall have any right, title or interest whatsoever in the Golf Course or the operations conducted on the Golf Course, including, but not limited to, usage rights, equity rights, prescriptive easements, any implied or preferential rights to use the improvements, or the right to the continued operation of the Golf Course. The Owners' right to use the Golf Course, if any, shall be solely by separate contract between the Owner and the Club.

Section 13.7 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Club, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting the Club, may be made without the written approval of the Club.

#### **ARTICLE XIV EASEMENTS FOR THE GOLF COURSE**

Section 14.1 General. Declarant reserves, creates, establishes, promulgates and declares the following non-exclusive, perpetual, reciprocal, appurtenant easements which shall benefit the Golf Course, members of the Club and the Owner(s).

Section 14.2 Establishment of Easements. There is hereby established for the benefit of the Golf Course and the members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees of the Club, a nonexclusive permanent easement to permit the doing of every act necessary and usual to the playing of golf on the Golf Course and to permit the doing of every act necessary and usual to operate and maintain the Golf Course. These acts shall include, but not be limited to the following:

- (i) Retrieval of golf balls, including the right to enter on any lot for that purpose, provided the right to retrieve golf balls shall only extend to non-enclosed portions of the lot, and the person retrieving the golf ball shall do so in a reasonable manner;

Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure as permitted under New Mexico law.

The Club may sue for unpaid Special Membership Dues and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any lot shall not affect the Special Membership Dues lien or relieve such Unit from the lien for any subsequent Special Membership Dues. However, the sale or transfer of any lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Special Membership Dues due prior to such sale or transfer. A Mortgagee or other purchaser of a lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for Special Membership Dues on such lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Property Expenses collectible from Owners of all lots subject to Special Membership Dues including such acquirer, its successors and assigns.

Section 13.5 View Impairment. Neither the Declarant, the Association, nor the Club guarantees or represents that any view over and across the Golf Course from lots will be preserved without impairment. The Club shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping or to install improvements or barriers (both natural and artificial) to the Golf Course from time to time. In addition, the Club may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, landscaping, bunkers, fairways and greens, improvements and barriers (both natural and artificial) from time to time. Any such additions or changes may diminish or obstruct any view from the lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view of the Golf Course which the lot may enjoy as of the date of the purchase of the lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of improvements or barriers (both natural and artificial) on the Golf Course.

Section 13.6 Golf Course and Private Amenity Risks. By acceptance of a deed to any lot, each Owner acknowledges and agrees that owning property adjacent to a Golf Course has benefits as well as detriments and that the detriments include: (a) the risk of damage to property or injury to persons and animals from golf balls which are hit onto an Owner's lot or other portion of the Properties or arising from the design, construction, operation, maintenance and/or use of the Golf Course; (b) the entry by golfers on the portion of an Owner's lot or other portion of the Properties utilized by the golfer to retrieve golf balls and/or other acts or omissions of persons using the Golf Course; (c) overspray in connection with the watering of the roughs, fairways and greens on the Golf Course; (d) noise from golf course maintenance and operation equipment (including, without limitation, compressors, blowers, mulches, tractors, utility vehicles and pumps, all of which may be operated at all times of the day and night and/or continuously); (e) odors arising from irrigation and fertilization of the turf situated on the Golf Course; (f) disturbance and loss of privacy resulting from motorized golf car traffic and golfers; and (g) the existence of water hazards, ponds, and/or lakes on the Golf Course; and (h) the Declarant and the Association will not own, manage, maintain or operate the Golf Course. Special Membership Dues and Rules will be solely at the discretion of the Club which is unaffiliated with the Declarant and the Association, except by contract rights and obligations. Special Membership Dues may

- (ii) Operation of lighting facilities for operation of the Club and other recreational facilities during hours of darkness, and the creation of usual and common noise levels associated with such recreational activities;
- (iii) Operation of golf carts and maintenance vehicles;
- (iv) Creation of noise related to the normal maintenance and operation of the Golf Course, including, but not limited to, the operation of mowing and spraying equipment. Such noise may occur throughout the day from early morning until late evening;
- (v) Creation of the usual and common noise level associated with the playing of the game of golf;
- (vi) An easement for the spray of herbicides, fungicides, pesticides, fertilizers, chemicals and water over the Golf Course; and
- (vii) All such other common and usual activities associated with the game of golf and all such other normal and usual activities associated with the operation and maintenance of the Golf Course.

Section 14.3 Golf Ball Retrieval. Every Lot and the Common Property of the Association adjacent to the Golf Course are burdened with an easement permitting golf balls unintentionally to come upon such Common Property, Lots or Common Property of the Association and for golfers at reasonable times and in a reasonable manner to come upon the Common Property of the Association to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from any activity relating to the Golf Course, including but not limited to, any errant golf balls or the exercise of this easement: the Declarant, or any successor Declarant; the Association or its Members (in their capacity as such); the Club; or their successors, successors-in-title, or assigns or any officer, director, member, manager, or partner of any of the foregoing.

Section 14.4 Additional Golf Ball Retrieval and Maintenance. The Club, its respective successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Property, or otherwise to maintain the Golf Course.

Section 14.5 Golf Course Maintenance. The owner of the Golf Course, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Property reasonably necessary to the operation, maintenance, repair and replacement of the Golf Course or the Private Amenity.

Section 14.6 Street and Common Property. There is hereby established for the benefit of the Golf Course and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over the streets, roads and Common Property

the Common Property to the extent necessary, as determined in the discretion of the Declarant, for construction, maintenance, drainage and utilities to the Private Amenity.

**ARTICLE XV**  
**GENERAL PROVISIONS**

Section 15.1 Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat and any amended plat(s). Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the property lines to the residences. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements. By acceptance of a deed to any lot, the Owner thereof covenants and agrees to keep and maintain, in a neat and clean condition, any easement, which may traverse a portion of the lot.

Section 15.2 Recorded Plat or Ordinance. All dedications, limitations, restrictions and reservations shown on the plat and any amended plat(s) or contained in any applicable zoning ordinance, are incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed, heretofore filed or to be executed by Declarant, conveying lots in the Subdivision whether specifically referred to therein or not.

Section 15.3 Lot Maintenance. The Owner and occupant of each lot shall maintain the yards in a sanitary and attractive manner. Grass and vegetation on each lot must also be maintained in a neat and attractive manner. If, after ten (10) days prior to written notice, an Owner of a lot shall fail to: (a) remove trash, rubble, building and construction debris; (b) exercise reasonable care and conduct to prevent or remedy an unclean, untidy or unsightly condition; or (c) otherwise satisfy the aforesaid maintenance requirements, then Declarant or Association shall have the authority and right but not the obligation to go onto the subject lot and any adjoining easement for the purpose of mowing and cleaning said lot or to otherwise affect the aforesaid maintenance requirements and shall have the authority and right to assess and collect from the Owner of said lot the amount so expended by the Declarant or Association in connection with mowing, cleaning or maintenance.

Section 15.4 Maintenance of Improvements. Each lot Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his/her lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, down spouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner.

Section 15.5 Mortgages. It is expressly provided that the breach of any of the foregoing conditions shall not defeat or render invalid the lien of any mortgage made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage, but said conditions shall be binding thereto as to lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

Section 15.6 Term. The foregoing covenants and restrictions shall run with and bind the land and shall remain in full force and effect for a term of fifty (50) years after this Fourth

reasonably necessary to travel between the entrance to the Properties and the Golf Course and over those portions of the Common Property reasonable necessary to the operation, maintenance, repair, and replacement of the Golf Course, including, without limitation, the operation of golf carts and maintenance vehicles thereon. Without limiting the generality of the foregoing, members of the Club and guests and invitees of the Club shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after special events, tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

Section 14.7 Water, Pesticides, etc. Any portion of the Properties immediately adjacent to the Golf Course are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for overspray of: (i) water from the irrigation system serving the Golf Course, and (ii) pesticides, herbicides, fungicides, chemicals and fertilizer. Under no circumstances shall the Declarant, the Association or the Club be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

Section 14.8 Irrigation Systems. The Declarant hereby reserves for itself, its successors and assigns (including the Club), and for the an easement and all rights to draw water from the lakes and ponds within or adjacent to the Properties for purposes of irrigation of the Golf Course and for access to and the right to enter upon the lakes and ponds within or adjacent to the Properties, if any, for installation and maintenance of any irrigation systems. Provided, however, such right shall be subject to any limitations imposed by or resulting from the rules and regulations of the Lincoln Hills Water Cooperative (or its successors or assigns) or the extent of water rights available to the Club.

Section 14.9 Signs. The Club shall have easements for erecting a reasonable number of temporary and permanent directional signs (the "Private Amenity Signs") to provide guidance to the public to the Golf Course ("Private Amenity Sign Easement"). The Club shall propose the number, style and locations of the Private Amenity Signs, which proposal shall be subject to the prior written approval of the Association. The Association's approval shall not be unreasonably withheld or delayed, and, the Association may not withhold its consent to the extent that the Private Amenity Signs proposed (i) are of a size and style consistent with Declarant's signage for the Properties or any portion thereof; (ii) do not unreasonably interfere with Declarant's development and marketing of the Properties; (iii) comply with all applicable laws, governmental rules and regulations; and (iv) comply with the Design Guidelines. At minimum, the Club shall be entitled to place primary Private Amenity Signs at locations adjacent to the main entrance to the Properties and the main entrance which shall be fully visible to traffic flowing in both directions along roads accessing the main entrances.

Section 14.10 Paths. The Golf Course may include an extensive system of paths for use by pedestrians, golf carts and maintenance vehicles. To the extent such paths are not located on the Golf Course or in the Club Easement Area, Declarant hereby reserves a nonexclusive easement appurtenant to the Golf Course on, over, under and across the Properties, as reasonably necessary for the installation, maintenance, repair, replacement, reconstruction, use and enjoyment of such paths.

Section 14.11 Miscellaneous. The Declarant reserves the right to grant to the Club and/or any other owner of any Private Amenity, temporary and/or permanent easements through



Amendment to Declaration is recorded. They shall be automatically extended for successive periods of five (5) years unless amended as provided herein or as allowed by applicable law.

Section 15.7 Severability. If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

Section 15.8 Binding Effect. Each of the conditions covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon each and every person acquiring any part of the Subdivision, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the Owner of the land, except land in the Subdivision and the same shall inure to the benefit of Owners of land in the Subdivision and the Declarant, its successors and assigns and the Association. This instrument, when executed, shall be filed on record in the deed records of Lincoln County, New Mexico, so that each and every Owner or purchaser of any portion of the Subdivision is on notice of the conditions, covenants, restrictions and agreements contained herein.

Section 15.9 Enforcement. The Owner of any lot in the Subdivision shall have the easement, license and right to have each and all of the foregoing restrictions, conditions and covenants herein faithfully carried out and performed with reference to each and every lot in the Subdivision, together with that right to bring suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each lot in the Subdivision, without reference to when it was sold, the right, license and easement to have such restrictions, conditions and covenants strictly complied with, such right to exist with the Owner of each lot and to apply to all of the lots and the Subdivision whether owned by the undersigned, its successors and assigns, or others. Failure by any Owner, including Declarant, and/or the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.10 Other Authorities. If other authorities such as the County impose more demanding, expensive or restrictive requirements than those set forth herein, the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those set forth herein shall not supersede or diminish the requirements herein.

Section 15.11 Notice to Members/Owner. Any notice required to be given to any Member or Owner under the provisions of this Fourth Amendment to Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as a Member or Owner on the record of the Association, the Declarant, or the Committee, and shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the address shown opposite the signature of the Declarant below or to such other address as specified by the Association pursuant to an instrument recorded in the deed records of the County.

Section 15.12 Amendment. Subsequent to the conveyance of any lot or portion of the Property, the covenants, conditions and restrictions set forth herein may be amended with the consent of fifty-one percent (51%) of the then Owners (including Declarant) of the lots (with one

vote to be cast for each lot owned) evidenced by a document in writing bearing each of their signatures. Notwithstanding the above, so long as the Declarant is the owner of at least one (1) lot, no amendment of the covenants, conditions and restrictions set forth herein shall be valid or effective without the joinder of the Declarant.

Section 15.13 Enforcement by the Association. The Covenants, Conditions and Restrictions of this Fourth Amendment to Declaration shall inure to the benefit of and be enforceable by the Association, its legal representatives, heirs, successors and assigns. Failure by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.14 Headings. The headings contained in this Fourth Amendment to Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Fourth Amendment to Declaration.

Section 15.15 Notices to Mortgages. If a holder of a mortgage on a lot shall notify the Association of its address and the identity of the lot and Owner covered by and granting such mortgage, then such mortgage holder(s) shall be entitled to receive written notification from the Association of any default by the respective Owner in the performance of such Owner's obligations as established by this Fourth Amendment to Declaration.

Section 15.16 Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application for the provisions for this Fourth Amendment to Declaration or the Bylaws of the Association shall be determined by the Board of Directors, whose determination shall be final and binding upon all Owners.

Section 15.17 Termination of and Responsibility of Declarant. If Declarant shall convey all of its right, title and interest in and to the Properties and assign all of its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

Section 15.18 Declaration of Ownership by Declarant. Declarant does hereby state and affirm that Declarant is the record owner of the Lots in the Subdivision ("Declarant's Lots"). Declarant does further state and affirm that Declarant's Lots constitute more than 51% of the total lots and that, pursuant to Section 5.12 of the First Amendment to Declaration, Section 14.12 of the Second Amendment to Declaration, Section 14.18 of the Third Amendment to Declaration and this Fourth Amendment to Declaration and shall be binding upon all of the Subjected Property.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed as of the 21st day of May, 2015.

**Address:**  
8120 Airport Road  
Santa Teresa, NM 88008

**Declarant:**  
OUTLAW PARTNERS, LLLP, a New Mexico  
Limited Liability Limited Partnership  
By: OUTLAW MANAGEMENT, LLC, a New Mexico limited  
liability company, its general partner

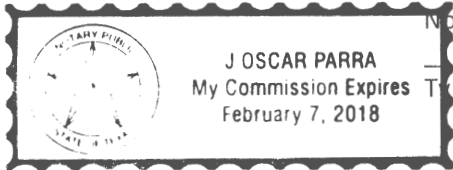
By: *K. Alan Russell*  
K. Alan Russell, Manager

STATE OF TEXAS            )  
  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 21<sup>st</sup> day of May, 2015, by K. Alan Russell, Managing Member of OUTLAW MANAGEMENT, LLC, the general partner of OUTLAW PARTNERS, LLLP, a New Mexico Limited Liability Limited Partnership, on behalf of said Partnership.

*[Signature]*

Notary Public in and for the State of TEXAS



Typed or printed name of Notary Public

My commission expires: \_\_\_\_\_