

DECLARATION OF COVENANTS  
FOR  
BOSQUE DEL RIO GRANDE  
SUBDIVISION

This Declaration of Covenants for Bosque Del Rio Grande Subdivision is made, as of the date indicated below, by Amboy, LLC, a New Mexico limited liability company, as Declarant, and Homes By Joe Boyden, LLC, a New Mexico limited liability company, as owner of Lots 10, 14, 15, 39, 40, 41, 42, and 66 of Bosque Del Rio Grande Subdivision, as shown on the Plat, as defined below.

**Imposition of Covenants, Conditions, Restrictions and Easements**

The Declarant and Homes By Joe Boyden, as the owners and holders of record title to all of the Property, as defined below, and with the desire to impose the provisions of this Declaration, as defined below, on all of the Property, and thereby subject all of the Property to the covenants, conditions, restrictions and easements hereinafter stated, for the purpose of protecting the value and standards of the Property, hereby declare that all of the Property shall be subject to the following covenants, conditions, restrictions, and easements, which shall run with the title to the Property and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the Property, and any portion thereof.

The Declarant, its successors and assigns reserves the right to bring within the scheme of this Declaration additional properties without the consent of the Association or the Lot Owners. The additions shall be made by filing of record a supplementary declaration of covenants and restrictions with respect to the additional property which shall extend the scheme of the covenants and restriction of this Declaration to such property. Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

**Article I**  
**Definitions**

When used in this Declaration, the following initially capitalized terms shall have the following meanings.

**1.1** “**Articles**” shall mean the Articles of Incorporation of the Association, filed with the New Mexico Public Regulation Commission, as amended and restated from time to time as therein provided.

**1.2** “**Association**” shall mean the Bosque Del Rio Grande Homeowner Association, Inc., a New Mexico non-profit corporation.

1.3 **"Board"** shall mean the Board of Directors of the Association and the governing body of any successor association.

1.4 **"Bylaws"** shall mean the Bylaws of the Association, as amended and restated from time to time as therein provided.

1.5 **"Committee" and "Design Review Committee"** shall mean the design review established pursuant to Article 4.

1.6 **"Common Areas"** shall mean all portions of the Subdivision owned by the Association and intended for the common use of the Owners, and their guests and invitees, including but not limited to all of Lot A as depicted on the Plat, and any gates, landscaped areas, mail boxes, walls and signage located on Lot A and all walking and biking trails reference in subparagraph 1.7.3 below.

1.7 **"Common Easements"** shall mean all easements in the Subdivision, whether or not owned by the Association, intended either for the common use of the Owners, and their guests and invitees, or for the use of the general public, including the following easements depicted on the Plat:

1.7.1 All easements described as "PRIVATE ACCESS AND PUBLIC UTILITY EASEMENT" or "AUE" on the Plat;

1.7.2 All easements described as "PUBLIC UTILITY EASEMENT" or "PUE" on the Plat, easements for electrical transformers as built and approved by the utility companies;

1.7.3 All easements described as "TRAIL EASEMENT" or "TE" on the Plat;

1.7.4 All easements burdening Lot 7 and Lot 8 described as "PARKING EASEMENT" on the Plat;

1.7.5 The easements burdening Lot 81 described as "IRRIGATION EASEMENT" and "WELL SHED" on the Plat; and

1.7.6 The easements described as "TRAIL EASEMENT" and "WELL SHED" on the Plat, which are walking and biking trails that extend from Lot A, across Lots 1 through 30 and Lot 51, including and easement for river access improvements;

1.7.4 All easements burdening Lot 7 and Lot 8 described as "PARKING EASEMENT" on the Plat which is for the use of guests and invitees of all owners;

1.7.5 The easement burdening Lot 81 described as "IRRIGATION EASEMENT" on the Plat; and

1.7.6 The easement burdening Lot 64 and Lot 65 described as "IRRIGATION EASEMENT" on the Plat.

1.7.7 The water harvesting swale located on Lots 1 through 13.

1.8 "Common Elements" All Roadways, drainage structures, bulletin boards, artwork and sculpture, trails, gates, benches, water wells and related equipment, walls, fences, irrigation equipment, landscaping, lights, mailboxes, and other structures and improvements located within the Common Areas and/or Common Easements owned by the Association and intended for the common use of the Owners, and their guests and invitees.

1.9 "Declarant" shall mean Amboy, LLC, a New Mexico limited liability company, or its successors or assigns.

1.10 "Declaration" shall mean this Declaration of Covenants for the Bosque Del Rio Subdivision.

1.11 "Lot" shall mean each and every numbered lot, improved or unimproved, located in the Subdivision, as shown on the Plat, namely Lots 1 through and including 81.

1.12 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee title, or an undivided interest therein, to any Lot, including real estate contract purchasers if they are not in default under the contract, but excluding those having an interest in a Lot merely as security for the performance of an obligation.

1.13 "Plat" shall mean that certain plat of survey titled "Plat of Survey of Bosque Del Rio" filed for record in on January 13, 2007, in Volume 3, folio 2622-A, of the records of Sandoval County, New Mexico.

1.14 "Property" shall mean the Lots, Common Areas, Common Easements, and any other real estate within the Subdivision, as shown and described on the Plat.

1.15 "Roadways" shall mean the paved roadways located within the Common Easements of the Subdivision, whether or not owned by the Association, intended either for the common use of the Owners, and their guests and invitees, or for the use of the general public.

1.16 "Subdivision" shall mean the real estate now known and described as the Bosque Del Rio Subdivision as shown and described on the Plat.

1.17 "Subdivision Rules" shall mean the rules adopted by the Board pursuant to the authority granted by this Declaration and from time to time in effect.

1.18 "Design Guidelines" shall mean the design guidelines enforceable by the Association attached as Exhibit A to this Declaration, as amended by the Board from time to time, which are hereby incorporated into and made a part of this Declaration as if fully set forth herein.

**Article 2**  
**Duration**

This Declaration, and the terms, provisions, covenants, conditions, restrictions and easements set forth herein, shall run with, and benefit and burden, the Property, and remain in full force and effect, until January 1, 2035, after which time the same shall be automatically extended for successive periods of ten (10) years each; provided, however, that Owners holding record title to at least eighty percent (80%) of the Lots, with the written consent of the Declarant, if the Declarant is the holder of record title to any Lot, (i) may revoke, rescind, and release all or any portion of the Property from this Declaration by executing and acknowledging an appropriate instrument, not more than one (1) year and not less than ninety (90) days prior to the expiration of said initial period or prior to the expiration of any ten (10) year extension period thereafter, and, (ii) except as otherwise expressly prohibited in this Declaration, may change, amend, modify or revise any of the terms and provisions of this Declaration, with respect to all or any portion of the Property, by executing and acknowledging an appropriate instrument at any time. Every such instrument shall be recorded in the records of Sandoval County, New Mexico. At such time as Declarant ceases to hold record title to any Lot, the consent of the Declarant to any such revocation, rescission, release, change, amendment, modification, etc., shall be unnecessary.

**Article 3**  
**Design Guidelines and Common Scheme Restrictions**

**3.1 Permitted Uses and Rentals.** Lots shall be used solely for single-family residential purposes. No business or commercial activity of any nature shall be conducted upon or from any Lot, except that home occupations shall be permitted so long as such home occupation does not involve the hiring of more than one employee who does not reside on the Lot but whose work is predominately performed on the Lot, and provided that such home occupation does not otherwise involve or result in any increase in automobile traffic which is offensive to other Owners. Permitted home occupations, as described above, are also subject to the regulations of and approval by the City of Bernalillo, if applicable. The rental of Lots is permitted, provided that such rental is for the entire Lot and all of the improvements located thereon (i.e. separate structures, or portions thereof, on a Lot may not be separately rented), for single-family residential purposes, with a term of one (1) month or more, and pursuant to a written rental agreement or lease which require the tenant(s) to observe the terms and provisions of this Declaration and makes the failure to so observe such terms and provisions a breach of such rental agreement by the tenants.

**3.2 Permitted Structures.** No structure shall be erected, altered, placed or permitted to remain on any Lot other than one principal residence, one garage, and other miscellaneous structures and improvements incidental to the residential use of the Lot and not otherwise restricted by this Declaration. All such structures shall comply with the Design Guidelines and free standing guest houses are prohibited in the Subdivision. No principal residence shall contain less than one thousand five hundred (1500) square feet, or more than four thousand (4,000) square feet, of heated floor space, exclusive of garages, portals, patios.

**3.3 Prohibited Structures.** No modular home, prefabricated structure, mobile home or similar structure shall be kept, placed, or permitted to remain within the Subdivision at any time, regardless of whether the same are placed on a permanent foundation. No temporary residence, garage, outbuilding, trailer or other similar structure may be erected, kept, placed, permitted to remain, or used within the Subdivision; except for temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any structure or improvement permitted by this Declaration and as approved by the Design Review Committee.

**3.4 Utilities.** All electrical, cable television, telephone, water, sewer, gas/propane and other utility lines and services shall be placed underground.

**3.5 Vehicles.** Automobiles, trailers, boats, motorcycles, all terrain vehicles and other vehicles shall be screened from view outside the Lot. No "dirt bike" motorcycles or "all terrain vehicles" shall be operated within the Subdivision. No recreational vehicles or commercial vehicles of any type may be stored on any Lot. Temporary parking (less than five (5) days) of recreational vehicles may be allowed with written notice to the Association.

**3.6 Storage Tanks.** No elevated tanks of any kind shall be erected, placed or permitted within the Subdivision. Any tanks for use in connection with any residence, including tanks for the storage of propane, shall be buried, and shall be screened from view outside the Lot.

**3.7 Derricks, Towers, Antennae, Etc.** No television, ham radio or any other exterior antenna of any sort, including satellite dishes, shall be installed or maintained on any Lot, except those devices which are erected, installed, placed and maintained in a manner that is screened from view outside the Lot and only after prior approval from the Design Review Committee. No radio or television transmission tower shall be erected, placed or permitted in the Subdivision.

**3.8 Animals.** Except as provided in this Section, no animals of any kind may be kept on any Lot, whether for personal or commercial purposes. Each Lot may have a maximum of two (2) dogs and two (2) cats, more than sixteen (16) weeks old (exclusive of litters of such pets) which must be confined on the Lot. Small household pets which remain inside the residence on a Lot, such as caged birds, aquarium fish, hamsters, guinea pigs, rabbits, etc. shall be allowed on a Lot, so long as the "nuisance" portions of this Section are not violated. No animals may be kept or maintained on any Lot in any manner or number which is a nuisance or offensive to the neighboring Lots, whether by reason of noise, habits, odors, or otherwise, anything to the contrary herein above notwithstanding. The owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animals' waste within the Subdivision. The owner of any pet or animal shall at no time allow such animal to run unrestrained on a Lot (except for enclosed yards), on any Common Area or Common Easement, and the owner shall at all times have full and complete control over such animal. No animal or pet training or trading as a business shall be carried on, directly or indirectly, on any Lot. The Board shall have the right to order the removal of any animal(s) which are kept in violation of this Declaration. Enclosures for animals shall be located within the required walled, hedged and/or fenced

confines of the compound on the Lot, and otherwise constructed in accordance with this Declaration and approved by the Committee.

**3.9 Billboards and Signs.** No billboards or advertising signs will be permitted on any Lot, Common Areas or Common Easements, except:

**3.9.1** A name plate of the occupant and address of any Lot with a maximum face area of one square foot and located on the Lot;

**3.9.2** Such signs as may be required by legal proceedings;

**3.9.3** During the time of construction of any structure on a Lot, a job identification sign with a maximum face area of six (6) square feet, of the type usually employed by a contractor, and located on the Lot;

**3.9.4** Appropriate safety, directional, and identification signs installed on or adjacent to Common Easements or public rights-of-way by Declarant, the City of Bernalillo, the Association, or as required by law;

**3.9.5** No "for sale" or "for rent" sign shall be allowed with respect to the resale of any improved or unimproved Lot; however, temporary "open house" signs are permitted with a maximum face area of six (6) square feet, provided such signs are removed by the end of the day during which the open house is held;

**3.9.6** Such residential or commercial identification signs, e.g. street name signs, trail signs, and subdivision signs, as Declarant and/or the Association shall desire to install and maintain, and located on the Common Areas or Common Easements; and,

**3.9.7** Such signs as shall be erected by the Declarant in connection with the development and marketing of Lots and the Subdivision.

**3.10 Exterior Lights.** All exterior lights must be located so as not to be directed toward surrounding Lots, Common Areas or Common Easements. Bright, glaring lights on walls, rooftops, patios or elsewhere are prohibited. Exterior lights and lighting systems are not to be installed without prior approval of the Committee. Standards for approval shall include "cut off" type light fixtures with no greater than fifty (50) watts of light allowed visible at the Lot line. No bright reflective glare shall be visible at the Lot line. Driveway, walkway and exterior house illumination should be of a subdued nature.

**3.11 Hunting, Firearms and Fireworks.** Hunting and the discharge of any types of firearms and/or fireworks are prohibited within the Subdivision.

**3.12 Gates.** The design, placement and installation of gates and gateways (decorative and otherwise) shall be approved by the Committee prior to construction and installation.

**3.13 Storage of Building Materials.** No storage of building materials other than during construction shall be permitted. No storage yard for materials other than those commonly and regularly in residential use, or for purposes of construction of the infrastructure of the Subdivision, shall be permitted.

**3.14 Refuse.** No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse shall be thrown, dumped or allowed to accumulate within the Subdivision. This does not prevent the construction of composting areas, which are maintained in a neat and orderly manner. All refuse, trash or waste shall be kept in sanitary containers, which containers shall be kept within the required walled, hedged and/or fenced compound and screened and concealed from view at all times (other than when being placed for pickup). The Subdivision shall be served by only one garbage company selected annually by the Association. Lot Owners shall be responsible to pay for their personal garbage removal by the garbage company selected by the Association.

**3.15 Nuisance.**

**3.15.1** No Lot shall be used for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants of Lots.

**3.15.2** No devices emitting noise levels exceeding decibel limits typical for residential areas shall be permitted in the Subdivision.

**3.15.3** During or after construction of improvements on any Lot, no concrete slurry shall be left on any Lot or within the Common Areas or Common Easements.

**3.15.4** No vehicles, parts of vehicles of any type, or large unsightly equipment or machinery shall be parked in any portion of the Subdivision visible from other Lots, Common Areas, Common Easements, for purposes of repairs, reconstruction, or storage, except in connection with the construction of the infrastructure of the Subdivision.

**3.15.5** No vehicle of any type, except maintenance vehicles and machinery, or as otherwise authorized by the Board, shall be operated on any Common Area. No automobiles or other motor vehicles shall be parked in any Common Areas, Roadways, or Common Easements within the Subdivision, other than temporarily, and on a non-recurring basis. No vehicles shall be kept or stored on any Common Easement for purposes of storage or accomplishing repairs thereto or the reconstruction thereof.

**3.15.6** No automobile or other vehicle shall exceed a speed of twenty (20) miles per hour on any Roadways.

**3.16 Stored Items.** All clothes lines, mechanical and other equipment, wood piles, storage piles, campers, horse trailers, automobiles, boat trailers, trailer homes, recreational vehicles and

similar vehicles are prohibited unless screened from view from other Lots, and contained within the required walled, hedged and/or fenced compound on a Lot.

**3.17 Lot Splitting and Consolidation.** No Lot within the Subdivision shall be split or further divided. No two or more Lots within the Subdivision shall be consolidated into one or more Lots, and no lot line(s) between lots shall be adjusted, unless Declarant or the Association shall have given its written consent; provided, however, that the consent of Declarant shall no longer be required after Declarant no longer holds record title to any Lot.

**3.18 Water Drainage.** The Property lies within the one hundred year flood zone. Appropriate flood insurance is recommended. No Lot Owner shall construct any impediment or otherwise block or alter the free flow of water across the Property or any Lot. Neither any drainage swale nor the original grading of a Lot shall be modified or altered without the written approval of the Design Review Committee.

#### Article 4

#### Design Approval and Construction Requirements

**4.1 Composition of Design Review Committee.** A Design Review Committee for the Subdivision, consisting of three (3) persons, is hereby established for the Subdivision. The Declarant shall appoint the initial members of the Committee. Until Declarant holds title to fewer than five (5) Lots, or until Declarant relinquishes in writing Declarant's right to appoint members of the Committee, whichever is earlier, the members of the Committee shall serve at the pleasure of Declarant, who shall have the right to appoint, reappoint and discharge members of the Committee, at will. Upon the expiration of such period of time, the Board shall elect the three (3) members of the Committee, who shall then serve for the following terms: Position 1: Three (3) years; Position 2: Two (2) years; Position 3: One (1) year. Upon the expiration of the term of each of the Committee members initially appointed by the Board, the Board shall elect a successor to such position, who shall serve for a period of three (3) years, such that the terms of the Committee members are staggered. A Committee member shall serve until his or her term expires, the member resigns or is unable to serve, or the member is removed in the manner provided for the removal of members of the Board in the Bylaws of the Association. Any vacancy in the Committee occurring before the end of a term shall be filled by a person elected by the Board. At least one of the members of the Committee, whether appointed by the Declarant or the Board, shall be any Owner. The affirmative vote of a majority of the members of the Committee shall be required for approval of any matter; provided, however that a majority of the members of the Committee may designate one member to act on behalf of the Committee.

**4.2 Submittal Requirements.** Before anyone shall commence the erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any improvement or structure of whatsoever nature, including but not limited to, a residence, garage, fence, wall, entrance gate, sign, driveway, underground utilities (including septic tank and leach lines), landscaping, etc., and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any such dwelling, improvement or structure, they shall submit for approval to the Committee all submittals required by the Design Guidelines.



**4.3 Approval Requirements.** No erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any improvement or structure of whatsoever nature, including, but not limited to, a residence, garage, fence, wall, entrance gate, sign, driveway, underground utilities (including septic tank and leach lines), landscaping, etc., or any painting, texturing, repainting or retexturing of the exterior surfaces of any structure or improvement shall be commenced unless and until the final plans and specifications submitted to the Committee shall have received the approval or deemed approval of the Committee. Additionally, no grading, tree cutting or other site disturbance may occur without the prior written approval or deemed approval of the Committee.

**4.4 Encroachments into Trail Easements.** The Committee may permit limited encroachments into the trail easements of garden walls, portales or other structures which add texture and interest to the trail, but do not hinder, disturb, or block its purpose as a trail.

**4.5 Approval Standards.** The Committee shall have the right to disapprove any plans and specifications submitted to the Committee for any one or more of the following reasons:

**4.5.1** If the plans and specifications are not in sufficient detail, or are incomplete.

**4.5.2** If, in the opinion of the Committee, the architectural design of the proposed improvements as shown by the plans and specifications, including exterior color scheme, or the location of any structure, is not consistent with or in harmony with the Design Guidelines for the Subdivision (as set forth in Section 4.6 of this Declaration) or the general surroundings, or with the improvements, or proposed improvements, near or adjacent to the location at which said improvements are intended to be erected.

**4.5.3** If, in the opinion of the Committee, the structures, driveways and other improvements proposed to be constructed are not sited on a Lot so as to minimize their disturbance of the natural vegetation, their visual prominence, or their impact upon adjoining Owners' and other property owners' views. The discretion of the Committee, however, may not be exercised so as to make a lot unbuildable, only to minimize the impact of construction, if at all possible. It is recognized that all construction and development will cause some disturbance and visual impact upon other Owners.

**4.5.4** If the work and/or structures sought to be approved are not consistent, in the discretion of the Committee, with the concept of a first class residential development.

**4.5.5** If the plans and specifications, or the work and/or structures sought to be approved, are not in compliance with all requirements and provisions of this Declaration.

**4.6 Design Guidelines.** The Committee wishes to encourage the development of a harmonious community consistent with the Design Guidelines. The Committee may, but shall be under no obligation to, or modify or amend, from time to time, the Design Guidelines and/or standards for approval of plans submitted to it pursuant to this Article. The Design Guidelines,

as they may exist from time to time, shall have the same force and effect and shall be binding upon the Owners as if they were set out in this Declaration. A copy of the Design Guidelines, as they exist from time to time, shall be kept with the Association's records, and shall be available to the Owners, upon request by the Owners.

**4.7 Non-Liability of the Committee.** The members of the Committee, and the Board, shall not be liable to Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

**4.7.1** The approval, conditional approval, disapproval, failure of approval, or delay in approval of any plans, drawings, and specifications, whether or not defective;

**4.7.2** The construction or performance of any work on any Lot, whether or not pursuant to approved plans, drawings, and specifications;

**4.7.3** The development or manner of development of any property within the Subdivision. By the acquisition of title to any Lot in the Subdivision, and in consideration thereof, each Owner thereby waives any and all claims, and the right to file suit, against the Committee, the Board, and the Association, to recover damages in connection with any of the foregoing events.

**4.8 Compliance of Other Projects.** No Owner or builder shall be permitted to commence construction of a structure, if any other structure or work currently under construction or previously constructed, by or for that Owner or builder on any Lot, does not comply with either the plans and specifications approved by the Committee for that other structure, or work, or the terms of this Declaration. In connection with the Committee's approval or disapproval of the plans and specifications for the new structure, the Committee shall provide the Owner or builder with written notice of the specific items not in compliance with approved plans or this Declaration for the prior structure or work by the Owner or builder that is in non-compliance.

**4.9 Construction Debris.** The dumping of concrete and other refuse on other Lots, the Common Areas or Common Easements is prohibited. During and after construction it shall be the Owner's and contractor's responsibility to leave surrounding areas clean and free from debris. Prior to commencement of construction, Owners and/or their contractors shall maintain a temporary toilet for the workers and a dumpster, of adequate size, on the Lot for the dumping of construction debris, and shall arrange for the regular pick-up of debris in such dumpster. Evidence of arrangements for the maintaining and dumping of such dumpster shall be provided to the Committee as a requirement for approval of plans by the Committee. In addition, a clean-out pit shall be dug on the Lot at the time of initial excavation, and shall be of a sufficient size to accommodate the retention in such pit of all concrete and plastering debris and clean-outs. All concrete and plaster clean-outs shall occur at such pit. The location of such pit shall be depicted on the site-plan submitted to the Committee for approval. The construction site must be kept clean, and the blowing of debris must be avoided. Violation of this Section will result in clean up at the Owner's expense, initially out of the Construction Deposit, and thereafter by special assessment against the offending Owner.

**4.10 Time for Commencement and Completion of Construction; Hours of Construction; Nuisance.** Construction shall begin within ninety (90) days after approval of plans is given by The Committee. If construction is not begun within such period of time, plans and specifications shall be resubmitted for approval before construction is begun. Once begun, exterior construction of any structure, including construction of any approved walls and fences and any re-vegetation and landscaping of any excavated area, shall be completed within two hundred forty (240) weather working days. All construction work shall be confined to the following hours:

Monday – Friday	7:00 a.m. to 6:00 p.m.
Saturdays	8:00 a.m. to 5:00 p.m.
Sundays	No work shall be allowed

The Committee may make prior, written exception to these allowed hours of construction if the nature or location of the work is such that it will not disturb any residents of other Lots. No loud music, television, etc., shall be played at any time at any construction site.

**4.11 Conditions for Occupation of Structure.** No residence, garage, or other structure on any Lot shall be occupied in any manner while in the course of construction.

**4.12 Variances.** When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot require, the owner of the Lot may apply to the Committee for variance approval, and the Committee, upon showing of good cause and necessity therefor without significant possibility of detriment to other Lots and Owners, may allow reasonable variances with respect to any provision of this Declaration, on such terms and conditions as the Committee shall specify by written report. The Committee's authority to grant variances is limited to matters within its jurisdiction under this Declaration. No such variance approval shall become effective until thirty (30) days after the Committee shall have mailed a copy of its written report to each Owner. If the Owner or Owners of either one (1) Lot adjacent to the Lot of the Owner seeking the variance, or any four (4) Lots give written notice of objection to such variance within said thirty (30) day period, the variance(s) shall not thereafter become effective until approved by the vote of at least a majority of the votes cast at the next regular or special meeting of the Association at which a quorum is present. The applicant for a variance may request in writing that a special meeting of the Association be held to vote on the variance request, in which event the Board of Directors shall convene such a special meeting at the earliest practicable time.

**4.13 Appeal of Committee Action.** An Owner may appeal a Committee action to the Board by requesting, in a writing delivered to the President of the Association, a hearing before the Board. Upon such a request, the Board shall schedule a special meeting, pursuant to the Bylaws of the Association, no later than twenty (20) days from the date of the Board's receipt of such a request. At such special meeting, the Owner's evidence will be heard, and the Board will decide whether or not to uphold the Committee's decision.

**Article 5**  
**Common Areas and Common Easements; Uses and Restrictions**

**5.1 Common Areas and Common Easements.** The Common Areas, Common Elements, and Common Easements shall be maintained by the Association, for the benefit of all Owners, pursuant to this Declaration, to enhance the value and desirability of the Subdivision, subject, however, to the following limitations and restrictions:

**5.1.1** The Common Areas, Common Elements, and Common Easements shall be subject to the following:

**5.1.1.1** Such rights and easements as may have been offered for dedication to public use;

**5.1.1.2** Such easements as may have been or are hereby, in this Declaration, reserved by or granted to Declarant;

**5.1.1.3** Such easements or other interests as may from time to time be taken under power of eminent domain;

**5.1.1.4** The right of the Association to suspend the right of an Owner (and any licensees, invitees and tenants of such Owner) to use the Common Areas, Common Elements, and Common Easements, excluding the Roadways, for any period during which any assessment levied by the Association against the Owner's Lot remains unpaid, or for a reasonable period, for any infraction of this Declaration or the Bylaws;

**5.1.1.5** The right of the Association to limit or permit the use of Common Areas, Common Elements, and Common Easements by non-members, to the extent the same have not been granted or dedicated to the public, as the Association deems appropriate, and the right of the Association to limit the number of guests and invitees of Owners using the Common Areas and Common Elements; and

**5.1.1.6** Such other easements as may from time to time be granted or conveyed by the Association pursuant to this Declaration.

**5.1.2** There shall be no improving, landscaping, decorating, or repairing of any of the Common Areas, Common Elements, or Common Easements except by the Declarant or the Association, and except for the installation of underground utilities and driveways to individual Lots.

**5.1.3** The Association shall have the right of reasonable access over and across the Lots where necessary to perform the Association's maintenance and inspection responsibilities under this Declaration. The Association shall have the right to control access to the Common Areas and Common Easements, however, the Association shall not impair the Owners' right of access to their Lots.

**5.1.4** Each Owner shall be liable to the Association for all damage to the Common Area, Common Elements, and/or Common Easements, or improvements or facilities situated thereon, caused by such Owner, his invitees, licensees or tenants.

**5.1.5** The ownership and access rights of the Association and the Owners to the Common Areas and Common Easements shall be subject to the following easements and encroachment rights:

**5.1.5.1** The Declarant and each Owner of a Lot, served by any utility connection, line or facility, including, but not limited to, those for water, sewer, treated effluent, and telephone services, shall have the right, and is hereby granted, a non-exclusive easement, to the full extent necessary therefor, to enter upon the Common Area and/or Common Easements and/or to have utility companies and/or County or City personnel enter upon the Common Area and/or Common Easements where such connections, lines or facilities or any portion thereof may lie, to extend, repair, replace and generally maintain the same. Whenever utility connections, lines or facilities installed within the Subdivision serve more than one Lot, the Owner of each Lot served hereby shall be entitled to the full use and enjoyment of the portions thereof which service such Owner's Lot. Declarant and each Owner are hereby granted easements over, under, and through the Common Area and/or Common Easements for installation of such utility connections, lines or facilities for the benefit of the Subdivision, or one or more Lots, or as may be needed or convenient for the development of the Subdivision or construction on one or more Lots.

**5.1.5.2** There is hereby granted to Declarant, non-exclusive easements over the Common Areas and Common Easements and the facilities located thereon for all construction and sales activities relating to Declarant's development of the Subdivision. It is anticipated that said construction and sales activities shall relate to individual projects developed from time to time on Lots and to the promotion or enhancement of either all or a portion of the Subdivision by Declarant.

**5.2 Declarant's Reservation of Easements.** Declarant reserves and is hereby granted an easement and right-of-way in, through, over, under and across all portions of the Subdivision for the purpose of completing its development and improvement work on the Subdivision, and, towards this end, Declarant reserves and is hereby granted the right to grant easements and rights-of-way in, through, under, over, on and across the Common Areas and Common Easements, for the installation, maintenance and inspection of lines and appurtenances for public or private water, drainage, cable television, gas or other utilities and for any other materials or services necessary for the completion of said development and improvement work. Declarant reserves and is hereby granted the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage lines which may from time to time be in or along the Common Areas or Common Easements. In addition, Declarant reserves and is hereby granted the right to continue to use the Subdivision and any sales offices, model homes, signs and parking spaces located on the Subdivision in Declarant's effort to develop and market improved and unimproved Lots. This Section may not be amended without the prior written

consent of Declarant. Any of the easements and rights reserved by and granted to Declarant in this Section may be assigned to merchant builders and may be exercised by Declarant's agents, employees and representatives.

**5.3 Easement to Inspect.** The Association and its duly authorized agents are granted the right to enter Lots to ascertain the extent of compliance with this Declaration, and to correct defaults if necessary. The Association shall endeavor to provide notice of said inspections and corrections to the occupant of the Lot at least twenty-four (24) hours prior thereto, except in cases of regular inspections and/or an emergency.

**5.4 Right to Dedicate.** Nothing contained in this Declaration shall be deemed to restrict or otherwise impede Declarant, or the Association, at any time and from time to time, from dedicating portions of the Common Area or Common Easements to any public or private agencies, authorities or utilities.

**Article 6**  
**Reserved**

**Article 7**  
**The Association**

**7.1 The Association.** The Association has been duly incorporated and organized according to New Mexico law pursuant to the Articles and Bylaws. The membership of the Association, powers and duties of members, and power and duties of the Association are specified in the Articles and Bylaws and are supplemented herein. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The Association has the duties, among others, to maintain the Common Areas, Common Easements and Elements, and Roadways.

**7.1.1** The President and Secretary of the Association, or any two (2) members of the Board of Directors, may execute, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board in favor of any person relying thereon in good faith.

**7.1.2** The affairs of the Association shall be managed by the Board, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration and the Articles and Bylaws for the Association.

**7.1.3** The Board shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year, and shall distribute such statement to each member and each mortgagee upon request.

**7.1.4** The Association shall take such action as may reasonably be necessary to enforce or carry out the purposes of this Declaration.

**Article 8**  
**Assessments by the Association**

**8.1 Mutual Covenants to Pay Assessments.** Each Owner, by acceptance of a deed to a Lot or real estate contract for the purchase thereof, covenants and agrees with each other Owner and with the Association, to pay all assessments levied by the Association, as provided under this Declaration and the Articles and Bylaws, whether or not such covenant is contained in such deed or contract or other conveyance.

**8.2 Lien for Non-payment of Assessments.** All sums assessed by the Association, including, without limitation, general assessments, special assessments, assessments for violations of this Declaration or the Articles and Bylaws, together with interest thereon, as hereinafter provided, reasonable costs and any attorney's fees incurred in connection with the collection thereof, chargeable to any Lot or its Owner, shall constitute a continuing lien on such Lot, from the date of assessment until paid.

**8.3 Late Fee and Interest on Unpaid Assessments.** Any assessment that is more than ten (10) days late, may be assessed a late fee as established from time to time by the Board. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the unpaid assessment shall bear interest at a rate equal to eighteen percent (18%) per annum, or such other rate as may be established by the Association from time to time, commencing on the date such assessment was due, and continuing until the date paid.

**8.4 Costs of Collection on Unpaid Assessments.** In any suit by the Association for collection of an unpaid assessment and/or to foreclose the lien of the Association for an unpaid assessment, the Owner shall be required to pay the costs and expenses of the Association in such proceeding, including reasonable attorney's fees. The Owner shall also be required to pay to the Association any assessment due for the Lot during the period of foreclosure. The Association shall have the power to bid on the Lot at foreclosure sale, and to acquire, and thereafter hold, lease, mortgage and convey the same.

**8.5 Notice of Assessment.** The Association shall give written notice to an Owner, and the holder of any lien on a Lot, who provides a written request for the same to the Association, of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

**8.6 Personal Debt of Owner.** Any assessment or charge against a Lot shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid assessments or charges shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid assessments from a person in possession of a Lot pursuant to a real estate contract for a period of forty-five (45) days following notice to such person of the unpaid assessment, before seeking such sums from the holder of record title to such Lot.

**8.7 Joint Liability for Assessments Upon Transfer of Lot.** The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the Lot at the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot, the amount of the current yearly assessment, the date that such assessment becomes due, and credits for advanced payments or for prepaid items, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within thirty (30) days of actual receipt by the Association of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against the subject Lot unless such lien has been recorded with the Sandoval County Clerk prior to the date the request is received by the Association.

**8.8 No Waiver of Assessments.** No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or Common Easements, by abandonment of his Lot or by any other means whatsoever.

**8.9 Initial Assessment Upon Lot Purchase.** Upon the closing of the initial purchase of each Lot from the Declarant, each Lot purchaser shall pay an initial assessment to the Association in the amount of \$500.00, which assessments shall be added to and held with the general funds of the Association. This initial assessment is in addition to the regular, periodic assessments.

**8.10 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any valid first mortgage now or hereafter placed upon any Lot, except that if the Association has filed notice of its lien with the Sandoval County Clerk prior to the filing of the first mortgage, the assessment lien (in the amount referred to in the filing, plus additional assessments accruing thereafter, plus interest, collection costs and attorneys' fees) shall have priority over all subsequently filed mortgages. No foreclosure, sale or transfer shall relieve a subsequent Lot or Lot Owner from liability for any assessments becoming due after the foreclosure sale.

**8.11 Protection of Mortgagees.** Any prospective mortgagee of a Lot shall, after payment of a reasonable charge to the Association, be entitled to a statement from the Association regarding the amount of unpaid assessments relative to any Lot. Inquiry to the Association shall be by U.S. Certified Mail, Return Receipt Requested, at the Association's then current registered address. If the Association does not respond to such inquiry within thirty (30) days of receipt of the inquiry the Association's lien for unpaid assessments which have accrued prior to the inquiry shall be of no effect to the interests acquired by a bonafide good faith mortgagee who thereafter acquires an interest in a Lot without the knowledge of an unpaid assessment.

## **Article 9**

### **Duties and Responsibilities of Owners**



**9.1 Owner's Responsibility to Maintain and Repair.** Each Owner shall be responsible for the maintenance and repair of his Lot and all structures and improvements located thereon, including, without limitation, the exterior of and areas surrounding the structures, the parking and landscaped areas, the exterior surfaces of any and all structures, including painting, stuccoing, and surfacing, and for the prompt rebuilding of the structure in the event of partial or complete destruction. All maintained areas shall be kept in clean and orderly condition.

**9.2 Maintenance of Landscaping.** Each Owner shall maintain the landscaping of his Lot in a neat and attractive manner. All plants shall be mowed, trimmed and cut as necessary at regular intervals.

**9.3 Observance of Responsibilities.** Each Owner shall comply with the provisions of this Article 9 and will cause the Owner's family, agents, guests, contractors, employees and any person renting or leasing the Owner's Lot to do likewise.

**9.4 Rights of Action.** The Association shall have a right of action against Owners for failure to comply with the provisions of this Article 9 of the Declaration. In addition to any other enforcement rights, if an Owner fails to fulfill such Owner's maintenance responsibilities, after reasonable notice from the Association and an opportunity of not less than fifteen (15) days for the Owner to cure such failure, the Association, and its agents, contractors, and employees, may enter the Lot and perform such maintenance. The Association shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of this Article 9, and the same shall constitute a special assessment against such Lot.

## **Article 10** **Responsibilities of Association**

**10.1 Maintenance of Roadways.** The Association shall maintain, in good condition and repair, all of the Roadways and appurtenant drainage structures.

**10.2 Maintenance of Other Common Easements and Common Areas.** The Association shall own, maintain and keep in good condition and repair all improvements and landscaping constructed and installed by Declarant or the Association within the Common Area or the Common Easements, including all Common Elements and without limitation signage, mailboxes, trails, wells and their appurtenant facilities, roads and curbs, lighting (poles, wiring, meters, controls and appurtenant facilities), common sewer lines, irrigations systems and drainage swales, etc.

**10.3 Solid Waste Disposal.** The Association may contract with a private trash hauler, licensed by the State of New Mexico, to provide periodic solid waste pick up service to all Lots in the Subdivision. The cost of the trash hauling services shall be paid by the individual Lot Owners utilizing such service.

**Article 11**  
**General Provisions**

**11.1 Enforcement.** Declarant, Association, and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The party substantially prevailing in any action to enforce or interpret the provisions of this Declaration shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in such action.

**11.2 Amendment.** Until Declarant sells and conveys at least twenty (20) Lots to owners, this Declaration may be amended by the Declarant or, by a vote of a majority of the entire Board of Directors, and the Declarant or the Board by majority vote, also have the authority to waive or modify setbacks, encroachments, or grant variances. Thereafter this Declaration may be amended by an instrument approved by at least fifty-one percent (51%) of the votes of the members present in person or by proxy, at a meeting called for that purpose. Every amendment must be recorded. Provided, however, that the power to amend this Declaration shall not authorize any amendment (1) permitting the sale, conveyance, lease, transfer, mortgage, pledge, granting of any deed of trust, or hypothecation of the Common Areas, (2) authorizing the dissolution of the Association or (3) altering the right of each Lot owner to membership in the Association with rights appurtenant thereto.

**11.3 Notices.** Any notices required or permitted under this declaration shall be delivered to the respective addressee or deposited in the United States mails, postage prepaid, certified or registered mail, return receipt requested, addressed to an Owner at the address for such Owner as shown in records maintained by Declarant or Association. Each Owner shall provide the Association with such Owner's current address. Any Owner may change his address by giving notice thereof to Declarant c/o Lynn Boyden, 11896 N. Highway 14, Tijeras, New Mexico, 87059.

**11.4 Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

EXECUTED the 18<sup>th</sup> day of APRIL, 2007, by Amboy, LLC, a New Mexico limited liability company, and Homes By Joe Boyden, LLC, a New Mexico limited liability company.

Amboy, LLC

By:  \_\_\_\_\_

Joe Boyden, Managing Member

**Homes By Joe Boyden, LLC**

By: *Joe Boyden*  
Joe Boyden, Managing Member

State of New Mexico     )  
  ) ss.  
County of Bernalillo     )

This instrument was acknowledged before me on this 18 day of April, 2007, by Joe Boyden, as Managing Member of Amboy, LLC, a New Mexico limited liability company, for and on behalf of said company.



*Heather C Barrett*  
Notary Public  
My commission expires: May 22, 2007

State of New Mexico     )  
  ) ss.  
County of Bernalillo     )

This instrument was acknowledged before me on this 18 day of April, 2007, by Joe Boyden, as Managing Member of Homes By Joe Boyden, LLC, a New Mexico limited liability company, for and on behalf of said company.



*Heather C Barrett*  
Notary Public  
My commission expires: May 22, 2007