

**Prepared by and when recorded
return to:**

Daniel K. Slone
McGuireWoods LLPt
901 E. Cary Street
Richmond, VA 23219-4030
804-775-1000

SOUTHERN CRESCENT

Community Operating Agreement

TABLE OF CONTENTS

| | |
|--|----|
| Recitals | 2 |
| Declaration | 3 |
| Section 1: Definitions | 3 |
| Section 2: Rights of Enjoyment | 9 |
| Section 3: Owner Voting Provisions | 10 |
| Section 4: Easements | 11 |
| Section 5: Assessments | 16 |
| Section 6: Insurance | 22 |
| Section 7: Damage and Destruction | 23 |
| Section 8: Eminent Domain | 25 |
| Section 9: Maintenance, Repairs and Replacements | 25 |
| Section 10: Architectural and Landscape Control | 27 |
| Section 11: Use and Occupancy Restrictions | 27 |
| Section 12: Equestrian Activities | 32 |
| Section 13: Trails | 33 |
| Section 14: Rights of Mortgagees | 34 |
| Section 15: Exemption of the Founder from Restrictions | 36 |
| Section 16: Operating Manager | 36 |
| Section 17: Remedies | 36 |
| Section 18: Amendment | 38 |
| Section 19: Term; Termination | 40 |
| Section 20: General Provisions | 41 |
| Section 21: Rights and Obligations | 43 |
| Section 22: Zoning and Master Plan | 43 |

This **COMMUNITY OPERATING AGREEMENT FOR THE SOUTHERN CRESCENT** (the "Community Operating Agreement") is made and entered into as of the **26th day of April, 2007**, by **Commonweal Conservancy, Inc.**, a New Mexico nonprofit corporation (the "Founder" and "Grantor/Grantee" for indexing purposes only), whose address is 117 N. Guadalupe Street, Suite C, Santa Fe, New Mexico 87501.

RECITALS

A. The Founder is the record owner of Lots 1 through 22 of the real property situated in Santa Fe County, New Mexico, described on Exhibit A attached to this Community Operating Agreement ("Southern Crescent"), which exhibit is incorporated into and made a part of this Community Operating Agreement by reference.

B. The Founder desires to submit and subject the real property described on Exhibit B (the "Property"), together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located on the Property, and all easements, rights, appurtenances and privileges belonging or in any way pertaining to the Property, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained in this Community Operating Agreement. The Founder further desires to establish and authorize a plan of development to be implemented by the Founder in accordance with, and under the authority of, this Community Operating Agreement.

C. The Founder desires that the Property be developed in accordance with the Plat for residential use and related facilities.

D. The Founder desires to establish covenants, conditions and restrictions on the Property, along with certain mutually beneficial restrictions and obligations concerning the proper use, occupancy and enjoyment of the Property, all for the purpose of enhancing and protecting the economic value, ecological vitality, recreational utility, and scenic beauty of the Property.

E. The Founder desires and intends that the owners, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other Persons acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth in this Community Operating Agreement, all of which are designed to help promote and protect the Property.

DECLARATION

NOW, THEREFORE, the Founder, for the purposes set forth above, declares that the Property shall be used for single family residential uses, as defined and provided for in this Community Operating Agreement, and shall from the date of recording of this Community Operating Agreement forward, be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth in this Community Operating Agreement, and any Supplemental Community Operating Agreements, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to all or any part of the Property, and shall inure to the benefit of the Founder, the Related Entities and every other owner of any interest in all or any part of the Property.

SECTION 1 - DEFINITIONS

Defined terms appear throughout this Community Operating Agreement with the first letter in each word of the term capitalized. Unless the context clearly requires otherwise, defined terms shall have the meanings given to them in this Section or elsewhere in this Community Operating Agreement.

1.1 “Assessments” means Assessments applicable to the Property and Owners of Parcels in the Property and shall include the following:

1.1.1 “Regular Assessments” as defined Section 5.3.

1.1.2 “Capital Improvement Assessments” as defined in Section 5.6.

1.1.3 “Reconstruction Assessments” as defined in Section 7.2.

1.1.4 “Stewardship Fee” as defined in Section 5.7.

1.2 “Assessment Lien” means the lien created and imposed by Section 5.1 with respect to amounts payable by Owners in accordance with the terms of this Community Operating Agreement.

1.3 “Business Use” shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required for such activity.

1.3.1 The leasing of an Owner's Parcel shall not be considered a trade or business. In addition, an activity shall not be considered "Business Use" if it meets all of the following requirements: (a) is not apparent or detectable by sight, sound or smell from outside the Parcel on which it occurs, (b) does not involve more than two individuals coming onto the Parcel who do not reside in the Parcel or solicitation of residents of the Property by anyone, whether or not a resident, and (c) is consistent with the residential character of the Parcel and not a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Founder.

1.3.2 By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of more than two employees other than those who reside on the Parcel, to outside parties off of the Property (or wholly without communication to outside parties) are not considered "Business Use." Instead, "Business Use" will exist if the activity involves or requires visits to the Parcel by actual or prospective customers, clients, or patients, by more than two employees who do not reside in the Parcel, or by others (excluding once a day document delivery services such as Federal Express), as a result of business activities by the Owner or Occupant of the Parcel.

1.3.3 Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Parcel will not make such employment a "Business Use" of the Parcel. Visits to the Parcel by more than two employees who do not reside there will be "Business Use" if the individuals are employed for the business purposes of the Owner or Occupant of the Parcel.

1.3.4 The definition of "Business Use" for purposes of this instrument may be clarified, supplemented and interpreted by the Founder from time to time, as it may choose in its sole discretion, so long as not materially inconsistent with the terms set forth above.

1.4 "City" means the City of Santa Fe, New Mexico, a municipal corporation in the State of New Mexico.

1.5 "Community Expenses" means the costs incurred by the Founder in conducting its operations and activities for the Property, in administering, maintaining and operating the Property, and owning or leasing any portions thereof, including, but not limited to, the following:

1.5.1 The costs of any maintenance, management, operation, repair and replacement of Neighborhood Community Areas, including the Private Roads in the Property, and all other areas in the Property which are maintained by the Founder other than those areas being managed or maintained as an "Individual Charge" in accordance with Section 5.4;

1.5.2 The costs of marking with signs or other appropriate indicators for Trails within the Property (and access to them) together with the cost to establish, maintain, reconfigure, resurface, and revegetate Trails or Neighborhood Community Areas adjacent to Trails;

1.5.3 The costs of any maintenance, repair and replacement of landscaping on Neighborhood Community Areas, and any additions to the Neighborhood Community Areas;

1.5.4 Unpaid Assessments and Individual Charges;

1.5.5 The costs of any maintenance by the Founder of areas within the right-of-way of any public streets in the vicinity of the Property that may be provided for in this Community Operating Agreement or in accordance with agreements with the County related to the Property;

1.5.6 The costs of management and administration of the Founder related solely to the Property or reasonably allocated to the Property by the Founder, including, but not limited to, compensation paid by the Founder to managers, accountants, attorneys and employees;

1.5.7 The costs of utilities and services for the Property, including, but not limited to, water, electricity, gas, sewer, trash pick up and disposal which are provided to the Founder or the Property and not individually metered, assessed, or billed by Parcel, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Founder;

1.5.8 The costs of insurance maintained by the Founder for the Property as permitted in this Community Operating Agreement;

1.5.9 Reasonable reserves for contingencies, replacements and other proper purposes, to meet anticipated costs and expenses including, but not limited to, maintenance, repairs and replacement of those Neighborhood Community Areas which must be maintained, repaired, or replaced on a periodic basis;

1.5.10 The costs that the Founder may elect to incur to bond any professional managing agent or any other Person handling the funds of the Founder related to the Property rather than the Project generally;

1.5.11 Taxes paid by the Founder for the Property;

1.5.12 Amounts paid by the Founder for discharge of any lien or encumbrance levied against the Neighborhood Community Areas or portion(s) thereof (or any

other portion(s) of the Property but arising from the acts of the Founder and/or its agents);

1.5.13 The costs incurred by the Design Review Committee with respect to the Property;

1.5.14 The costs incurred by other committees established by the Founder for the Property;

1.5.15 Other expenses incurred by the Founder for any reason whatsoever in connection with the Neighborhood Community Areas, or the costs of any other item or items designated by, or to be provided or performed by, the Founder for the Property in accordance with this Community Operating Agreement, the Community Development Standards, or in furtherance of the purposes of the Founder or in the discharge of any duties or powers of the Founder with respect to the Property.

1.6 “Community Development Standards” means the rules, regulations, restrictions, architectural standards and design standards adopted by the Founder as they may be amended from time to time in accordance with Sections 10 and 18 and applicable to the Property (whether or not also applicable to other portions of the Project).

1.7 “Community Operating Agreement” means this instrument, as it may be amended from time to time.

1.8 “Compound” means a consolidation of Parcels by replatting, or a replatting of two or more contiguous Parcels to permit a clustering or other relocation of dwellings. A Compound may have commonly owned amenities or other improvements as permitted in Section 11.9 and in accordance with the Community Development Standards.

1.9 “County” means the County of Santa Fe, a political subdivision of the State of New Mexico.

1.10 “Default Rate of Interest” is defined as the lesser of 15 percent (15%) per annum or the amount deemed usurious under applicable law.

1.11 “Development Envelope” means the maximum developable area of a Parcel. As described in the Community Development Standards, each Parcel shall contain one Development Envelope for residential and equestrian uses and related improvements.

1.12 “Equestrian Trails” is defined in Section 12.

1.13 “First Mortgage” means a "Mortgage" which is the first and most senior of all Mortgages upon the same property.

- 1.14** “First Mortgagee” means the holder of a First Mortgage.
- 1.15** “Fiscal Year” means the calendar year beginning on January 1st and extending through December 31st.
- 1.16** “Founder” means Commonweal Conservancy Inc., a New Mexico nonprofit corporation, its successors and assigns, or any Person to whom Founder's rights hereunder are hereafter assigned in whole or in part by recorded instrument, or any Mortgagee of the Founder which acquires title to or succeeds to the interest of the Founder in any Parcel or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee.
- 1.17** “Individual Charge” shall have the meaning set forth in Section 5.4 of this Community Operating Agreement.
- 1.18** “Insurance Trustee” is defined in Section 7.6.
- 1.19** “Mortgage” means any recorded, filed or otherwise perfected instrument, which is not a fraudulent conveyance under New Mexico law, given in good faith and for valuable consideration as security for the performance of an obligation, including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.
- 1.20** “Mortgagee” means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.
- 1.21** “Mortgagor” means the party executing a Mortgage as obligor.
- 1.22** “Neighborhood Community Areas” are those areas within the Property whose use is otherwise reserved by the Founder for Owners and Occupants of Parcels in the Property either exclusively or non-exclusively (but on some basis other than that generally available to owners and occupants elsewhere in the Project). Neighborhood Community Areas are shown on Attachment 1 to Exhibit B attached to this Community Operating Agreement and incorporated herein.
- 1.23** “Occupant” means any Person, other than an Owner, in rightful possession of a Parcel in the Property, whether as a guest, tenant or otherwise.
- 1.24** “Owner” means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, of any Parcel in the Property, including contract purchasers but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to any Parcel in the Property is vested of record in a trustee in accordance with New Mexico law, legal title shall be deemed to be in the beneficiary.

1.25 “Parcel” means a lot or legal plot of land as identified by the Southern Crescent Plat Map filed for record November 28, 2006 in Plat Book 641, Pages 005-006, as Document No. 1460777, records of Santa Fe, New Mexico.

1.26 “Person” means an individual, corporation, partnership, trustee or other entity.

1.27 “Plat” means the plat of subdivision of the Parcel as first recorded in the real property records of Santa Fe County, New Mexico, on November 28, 2006, in Book 641, at pages 005-006, as Document No. 1460777, and as thereafter from time to time amended or supplemented. The Plat may depict real property not subject to this Community Operating Agreement without subjecting it in any manner to the provisions hereof.

1.28 “Private Roads” and “Private Streets” are synonymous and mean (for purposes of this Community Operating Agreement) any street, roadway, drive, sidewalk, walkway, path or other right-of-way within, or partly within, the Property which, except as hereinafter provided, has not expressly been dedicated to the public use (and include, but are not limited to, any streets and rights-of-way designated as private access ways and public utility easements on the Plat). In the event that the Founder elects to dedicate a Private Road to public use and expenses must be incurred for the purpose of bringing the Private Road into conformance with specifications of the County, the expenses shall be considered costs of capital improvements and subject to the provisions hereof for Capital Improvement Assessments.

1.29 “Project” is defined as the “Galisteo Basin Preserve” – an approximately 12,800-acre tract of land held under contract by Commonweal Conservancy Inc., that is proposed for a wide range of conservation and community development uses and that includes the Property.

1.30 “Property” means that real property described in Exhibit B, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.31 “Proportionate Share” means that fraction wherein the numerator is one and the denominator is the total number of Parcels subject to this Community Operating Agreement at the time of calculation.

1.32 “Recreational Uses” means any uses or activities of a recreational nature, including but not limited to, hiking, walking, biking and mountain biking, sightseeing, nature study, fishing, swimming, equestrian use, etc. Recreational Uses specifically exclude the use of motorized off-road vehicles, including but not limited to, all-terrain vehicles, motorbikes, minibikes, motorcycles, and motocross bikes.

1.33 “Related Entity” means any partner of the Founder and any partner, trustee, officer, director, shareholder, principal or similar Person holding an interest or position in any partner of the Founder, and their successors and assigns.

1.34 “Related Entity Owner” means any Related Entity to whom the Property is transferred by distribution or by means other than a purchase for value.

1.35 “Retail Purchaser” means a Person who purchases a Parcel in the Property in a retail transaction and shall not include Founder, any Related Entity, any Related Entity Owner, or any other Person who acquired the Parcel (a) by distribution (as distinguished from purchase), (b) in a bulk sale transaction, or (c) in any similar transaction.

1.36 “Rules and Regulations” means those reasonable Rules and Regulations adopted for the Property by the Founder.

1.37 “Taking” is defined in Section 8.

1.38 “Trails” are defined as those private or public paths and trails within the Property used for hiking, walking, non-motorized bicycling, or other passive recreational uses, but not including equestrian use.

1.39 “Transition Date” is defined as the date in which the Founder divests itself of any further control, authority or responsibility over the Property.

SECTION 2 - RIGHTS OF ENJOYMENT

2.1 Owners' Right of Enjoyment. Every Owner and Occupant shall have a nonexclusive easement to use and enjoy the Neighborhood Community Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Community Operating Agreement, including, but not limited to, the following provisions:

2.1.1 The right of the Founder to impose Rules and Regulations pertaining to or restricting the use of Neighborhood Community Areas, including without limitation, (a) restrictions on the use of Equestrian Trails for Equestrian Use by Owners or other Persons, (b) limits on the number of guests of Owners and Occupants that may use the Neighborhood Community Areas, (c) and other limits or restrictions that Founder may determine, in its discretion, to be appropriate and necessary for the Property.

2.1.2 The right of the Founder to borrow money for the purpose of improving, replacing, restoring or expanding the Neighborhood Community Areas or adding new Neighborhood Community Areas and, in aid thereof, to mortgage the

Neighborhood Community Areas, provided that the rights of the lender under such Mortgage shall be subordinated to the rights of the Owners of Parcels.

2.1.3 The right of the Founder to suspend the right of an Owner or any Person (including, but not limited to, a member of the family of an Owner) to use any or all of the Neighborhood Community Areas during any time in which any Assessment or Individual Charge of the Owner or for the Owner's Parcel remains unpaid and delinquent, or for any infraction of the Community Development Standards, or breach of this Community Operating Agreement, and for any repetition of such payment delinquency or infraction, in accordance with the provisions of this Community Operating Agreement. The Founder shall not have the right under this Community Operating Agreement to limit or suspend any Owner's rights to such an extent that the Owner is denied access to his Parcel.

2.1.4 The right of the Founder to dedicate or transfer all or any part of, or interest in, the Neighborhood Community Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Founder without the consent or approval by an Owner or other Person except as expressly required in this Community Operating Agreement (by way of illustration and not limitation, the Founder shall have a right to dedicate or transfer to the public all or any portion(s) of the Private Roads at any time or from time to time). If the Founder has appointed an operating manager, the operating manager shall make no such dedication or transfer without the written consent of the Founder (so long as the Founder or any Related Entity Owner owns or is operating any real or personal property subject to this Community Operating Agreement).

2.2 Delegation of Use. No Owner may delegate his right to use and enjoy the Neighborhood Community Areas to any Person, except to the members of his immediate family, to Occupants of his Parcel, or to his invitees as permitted by the Community Development Standards.

2.3 Waiver of Use. No Owner may exempt himself, and no Owner shall be exempt, from personal liability for Assessments or Individual Charges. No Owner may release any Parcel owned by him from the liens, charges and other provisions of this Community Operating Agreement, the Community Development Standards, by voluntary waiver of, or suspension or restriction of, the Owner's right to use and enjoy the Neighborhood Community Areas, or by the abandonment of the Owner's Parcel.

SECTION 3 - OWNER VOTING PROVISIONS

3.1 Approval of Owners. Unless elsewhere otherwise specifically provided in this Community Operating Agreement, any provision of this Community Operating Agreement that requires the vote or written assent of the Owners shall be deemed satisfied by the following:

3.1.1 The vote in person or by proxy of the specified percentage of Owners entitled to vote at a meeting called and noticed in accordance with the provisions of the this Community Operating Agreement; or

3.1.2 Written consents signed by the specified percentage of Owners entitled to vote.

3.1.3 If no percentage of Owners is otherwise specified, then the vote or written assent of a majority of Owners shall be required.

If any provision of this Community Operating Agreement requires the vote or written assent of the Owners, the Founder shall coordinate the procedures for voting, including the procedures for providing notice to Owners.

3.2 Notice. The Founder, or its successors or assigns, shall be responsible for providing written notice to Owners concerning all issues upon which Owner consent, approval, or disapproval is required under this Community Operating Agreement.

SECTION 4 - EASEMENTS

4.1 Use of Neighborhood Community Areas. Except for the use limitations provided in Section 4.2, each Owner shall have the nonexclusive right to use the Neighborhood Community Areas in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Parcel owned by the Owner or Neighborhood Community Areas available for the Owner's use in common with other Persons. The right to use the Neighborhood Community Areas for purposes of access and ingress and egress shall, subject to the Community Development Standards, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. This right to use the Neighborhood Community Areas shall be appurtenant to each Parcel, subject to and governed by the provisions of this Community Operating Agreement, the Community Development Standards, and such reasonable Rules and Regulations as may from time to time be adopted or amended by the Founder.

4.2 Exclusive Use Rights. Certain portions of the Neighborhood Community Areas may be reserved by this Community Operating Agreement (or any amendment or supplement to the Community Operating Agreement), the Plat (or any amendment or supplement to the Plat), or the Founder for the exclusive control, possession and use by the Owner of a Parcel or the Owners of more than one but fewer than all Parcels. If such an area serves as access to and from two or more Parcels, the Owners of the affected Parcels shall have joint control, possession and use of the portion of the area that reasonably serves the Parcels. The exclusive use rights created in this Community Operating Agreement are subject to the blanket utility easement, maintenance, and architectural and landscape control provisions contained in this Community Operating Agreement and to such reasonable Rules and Regulations with respect to possession,

control, use and maintenance as the Founder may from time to time promulgate. Each Owner, by accepting title to a Parcel, and each Member, shall be deemed to have further ratified the rights to exclusive use created by this Section.

4.3 Wall or Fence Easement. This Community Operating Agreement creates an affirmative easement in favor of the Founder, its employees and agents, upon, over and across each Parcel affected for reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence or other boundary control for the Property.

4.4 Founder Easement. This Community Operating Agreement creates an affirmative, nonexclusive easement in favor of the Founder (and the employees, agents, invitees, licensees, contractors and guests of the Founder, and other Persons permitted by the Founder), and appurtenant to portions of the Project owned by the Founder or any Related Entity Owner, for ingress and egress over all Neighborhood Community Areas, including, but not limited to, Private Streets. This easement is also for the Founder (and the employees, agents, invitees, licensees, contractors and guests of the Founder, and other Persons permitted by the Founder) to go over, under and across, and to enter and remain upon all Neighborhood Community Areas, Trails, and all unoccupied Parcels for all purposes reasonably related to the Founder's rights and obligations under this Community Operating Agreement and to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property owned by the Founder or any Related Entity Owner.

4.5 Easements for Other Property. This Community Operating Agreement creates on, over and under the Private Streets of the Property, easements appurtenant to the Project related to the development and conservation uses of the Galisteo Basin Preserve (including, but not limited to, ingress and egress and access to and from the various portions of the Galisteo Basin Preserve and for installing, constructing, replacing, repairing, maintaining and operating all utilities and utility services (whether public or private)).

4.6 Revegetation Easements.

4.6.1 This Community Operating Agreement creates affirmative, nonexclusive easements in favor of the Founder and its contractors, agents and employees to go upon any Parcel and Community Area that contains areas that prior to the date of this Community Operating Agreement were parts of roadways that have been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past for some other reason, to grade, shape, level or fill the areas or portions of these roadways to change them to a more natural appearing terrain, and to remove such earth or bring in such fill as the Founder deems appropriate to accomplish the work.

4.6.2 This easement also allows the Founder to go upon any Parcel and Community Area of the Project to plant or seed, and to provide temporary maintenance for, indigenous vegetation and grasses of the Founder's choice (so long as the Founder or any Related Entity Owner owns any property within the Project). The planting and seeding shall be to (a) replant areas that prior to the date of this Community Operating Agreement were parts of roadways that been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past for some other reason, or (b) maintain the aesthetic integrity of the Project; and to provide temporary water to such vegetation at the expense of the party causing the revegetation to be performed or at the expense of the Owner, as an Individual Charge, if the area was cleared by the Owner or Occupant of the Owner's Parcel, or the invitee, guest, contractor, or other authorized visitor of either in violation of this Community Operating Agreement or the Community Development Standards. However, nothing in this Section shall be construed or deemed to create any obligation or responsibility for Founder or a Related Entity to do replanting, reseeding, or maintenance or to provide water, in any areas of the Project.

4.7 Founder's Reserved Rights and Additional Easements.

4.7.1 Addition or Withdrawal of Property. The Founder shall have the right, but not the obligation, for a period of thirty (30) years from the date of this Community Operating Agreement, from time to time in its sole discretion, to add to the Property any part of the Project. This reserved development right may be exercised with respect to different portions of the Project at different times. No assurances are made as to the boundaries of those portions or order in which the portions will be added. The Founder may also add to the Property any other property with a reasonable relationship to the Property.

(i) Supplemental Declaration. A supplemental declaration adding the additional property shall become effective upon being recorded in the real property records of the Office of the County Clerk, and upon such recording the additional property shall become part of the Property, subject to this Community Operating Agreement. The supplemental declaration may modify, remove or add to the provisions of this Community Operating Agreement if needed to reflect the different character of the additional property, including a different assessment allocation.

4.7.2 Withdrawal of Property. The Founder reserves the right to withdraw property from the Property so long as all Owners within the area to be withdrawn consent and access to the remaining portions of the Property is preserved.

4.7.3 Use of Name. The Founder reserves the right to trademark the name “Southern Crescent” or other name of the Project as a trade name owned by the Founder. An Owner or Occupant may use the trademarked name to describe the location of its business and may advertise a business as being located in “Southern Crescent” or other trademarked name. If requested by the Founder, the Owner or Occupant shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. An Owner or Occupant may not use the trademarked name in any other manner without the express permission of the Founder, which may be arbitrarily denied. The Founder shall have the right to change the name, Southern Crescent, for all or any part of the property subject to this Community Operating Agreement. The Founder may, but is not required to, amend this Community Operating Agreement to reflect the name change.

4.7.4 Reserved Easements. The Founder, its successors and assigns, is hereby granted all easements over, across, under and through the Property reasonably necessary to permit the Founder to continue and complete construction of the Project, whether or not that property is ultimately submitted to this Community Operating Agreement, and all other properties owned by the Founder or its assigns which are adjacent to, or reasonably near, the Property (including property separated from the Property by a public road), whether or not such properties are developed as part of the Property. Without limiting the generality of the foregoing, the Founder shall have the following easements:

(i) Private Roads and Trails and Paths. A nonexclusive easement for use of any roads or streets within the Property which are not accepted for dedication to the public and which are intended for automobile traffic (including rear lanes or other similar access roads that are generally intended for use only by residents on that road), along with a nonexclusive easement for appropriate use of any pedestrian paths or Trails and Equestrian Trails.

(ii) Utility Easements. A blanket easement upon, across, over, through, and under the Property for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems and services may include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, natural gas, television, security, collection of garbage and recyclable materials, cable or communication lines and other equipment. By virtue of this easement the Founder, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. The Founder has the exclusive right, if it desires, to provide for installation, replacement, repair and maintenance of cable and fiber optic systems in the Project. By virtue

of this right, the Founder, its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits throughout the Project. However, the exercise of this right must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel.

(iii) Police Powers. A blanket easement throughout the Property for private patrol services and for police powers and services, including without limitation law enforcement, emergency rescue, and fire rescue, supplied by the local, state and federal governments. This easement allows police, rescue, and fire officials to clear private streets for emergency vehicle access. The reservation of such easement does not imply that any such service shall be provided.

(iv) Drainage, Erosion Controls. A blanket easement and right on, over, under and through the ground within the Property to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The entity that exercises this easement shall be responsible for notifying the affected Owners (except in an emergency) but shall not be obligated to restore landscaping or other improvements. This easement may be exercised at the option of the Founder and shall not be construed to obligate the Founder to take any affirmative action to correct conditions.

(v) Encroachment. An easement for any improvements constructed on the Neighborhood Community Areas that encroach on any Parcel, whether due to any minor deviation from the subdivision plat of the Property or the settling or shifting of any land or improvements.

(vi) Maintenance of Southern Crescent Neighborhood Community Areas. An easement for maintenance and improvement of the Neighborhood Community Areas at the Founder's discretion and, to the extent reasonably necessary, an easement over any Parcel for maintenance of the Neighborhood Community Areas.

4.7.5 Subeasements and Assignment of Easements. The Founder, at its sole discretion, reserves the right to grant subeasements or assign all or a portion of its easements to third parties.

SECTION 5 - ASSESSMENTS

5.1 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Parcel and/or title to a Parcel, is deemed to covenant and agree to pay to the Founder: Regular Assessments, Individual Charges, Capital Improvement Assessments, Reconstruction Assessments, Stewardship Fees, and Stewardship Contributions (“Assessments and Charges”). Assessments and Charges provided for in this Community Operating Agreement shall be payable in addition to, and not in lieu of, the Assessments and Charges payable by all Owners. All such Assessments and Charges will be established and collected from time to time as provided in this Community Operating Agreement. The Assessments and Charges, together with interest on such assessments and charges, late charges, reasonable attorneys' fees and court costs, and other costs of collection, as provided in this Community Operating Agreement, shall be a continuing lien (the “Assessment Lien”) upon any Parcel (or combined Parcels as provided in Section 11.9) against which the Assessments and Charges are made. Each Assessment and Charge, together with such interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment or Charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him.

5.2 Purpose of Assessments. The Assessments levied by the Founder in accordance with this Community Operating Agreement shall be used to promote the recreation, health, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Founder with respect to the Property and all other Community Expenses for the Property, and otherwise to further the interests of the Founder with respect to the Property. Where a Parcel has separate security, gas, electrical, wastewater or other similar services, all costs related to them (including, but not limited to, service charges, repairs and maintenance) shall be the personal obligation of the Owner and shall not be a part of the Community Expenses to be paid through Regular Assessments.

5.3 Regular Assessments.

5.3.1 Obligation to Pay. No Regular Assessments shall be levied or due under this Community Operating Agreement prior to, or within thirty (30) days following completion of required infrastructure improvements serving the Parcels, whichever is later. Except as otherwise specifically provided in this Community Operating Agreement, each Owner shall pay as his “Regular Assessment” for his Parcel the Owner's Proportionate Share of the Community Expenses, and payment of Regular Assessments shall be in such amounts and at such times as may be determined by the Founder for the purpose of paying and satisfying Community Expenses other than expenses related to capital improvements (dealt with in Section 5.6) and to restore Neighborhood Community Areas (dealt with in Section 7).

5.3.2 Annual Calculation. Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of each fiscal year of the Founder, starting with the fiscal year in which Regular Assessments commence for the Property, the Founder shall make available for review by each Owner of a Parcel in the Property a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Community Expenses to be incurred for the fiscal year. Such information may be included in the operating statement or budget prepared for the Founder as a whole rather than in separate documents prepared for the Property, alone, so long as the information related to the Property is separately identified. The Founder shall at that time determine the amount of the Regular Assessment to be paid by each Owner for his Parcel and notify the Owner thereof. The Regular Assessment to be paid by each Owner for each Parcel subject to Assessments hereunder shall equal the Owner's Proportionate Share of the estimated total Community Expenses (or any supplemental estimate under Section 5.3.3). Each Owner shall thereafter pay his Regular Assessment to the Founder at such regular intervals as may be fixed by the Founder. Each such installment shall be due and payable on the date set forth in the written notice sent to Owners.

5.3.3 Adjustment During a Year. Regular Assessments payable hereunder may be adjusted during any fiscal year as follows:

(i) If the Founder determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Community Expenses for whatever reason, including Community Expenses in excess of the estimated Community Expenses used in preparation of the Founder's budget for the Property for that year, the Founder shall then immediately determine the approximate amount of such inadequacy and issue to Owners a supplemental estimate of the Community Expenses and determine the revised amount of Regular Assessments to be paid for each Parcel for the balance of the year, and the date or dates when due. Regular Assessments shall not be increased by more than fifteen percent (15%) if a majority of the Owners disapprove the increase in writing within ten (10) days of receipt of the supplemental estimate indicating the revised amount of the Regular Assessments. If the majority of the Owners disapprove the increase, the Founder shall revise the budget so that the increase is not more than fifteen percent (15%). In such case, the Founder shall not be responsible for or liable in any way for operation or maintenance activities that are not funded as a result of the Owner disapproval.

(ii) If the estimated total Regular Assessments for any current year prove to be excessive in light of the actual Community Expenses, the Founder may, at its discretion, retain the excess as additional working capital or reserves for the Property, reduce the amount of the Regular

Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Community Expenses for the year in question are based.

5.4 Individual Charges. “Individual Charges” shall be levied by the Founder against an Owner, and his Parcel in accordance with this Community Operating Agreement for:

5.4.1 Costs incurred in bringing an Owner or his Parcel into compliance with the provisions of this Community Operating Agreement, the Community Development Standards, or the Rules and Regulations;

5.4.2 Any other charge designated as an Individual Charge in this Community Operating Agreement, the Community Development Standards, or the Rules and Regulations;

5.4.3 Penalties levied or fixed by the Founder or any Design Review Committee that may be established under Section 10 of this Community Operating Agreement or as otherwise provided in this Community Operating Agreement; and

5.4.4 Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, an Individual Charge in accordance with this Community Operating Agreement, the Community Development Standards, or the Rules and Regulations.

In the event the Founder undertakes to provide materials or services which benefit individual Owners or Parcels and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Charge.

5.5 Patrol and Safety Services. The Founder may require that any Owner wishing patrol or safety services (including, but not limited to, fire and burglar alarm services) for his particular Parcel, as distinguished from general patrol and safety services described in Section 4.7.4(iii), obtain the service from a Person (which could be the Founder) selected by the Founder to provide such service to all Owners in the Property wishing such service. The fees for any such service would not be part of the Regular Assessments.

5.6 Capital Improvement Assessments. In addition to the Regular Assessments, the Founder may levy a “Capital Improvement Assessment” in accordance with this Community Operating Agreement. The Capital Improvement Assessments may be levied against Parcels and Owners in any calendar year after the year 2010, for the

purpose of defraying, in whole or in part, the Owner's proportionate share of the cost of any action or undertaking on behalf of the Founder in connection with any construction or replacement of capital improvements upon the Neighborhood Community Areas of the Property, including the necessary fixtures and personal property related to the Neighborhood Community Areas, to the extent they are not covered by the provisions affecting Reconstruction Assessments in Section 7.

5.6.1 The Founder may impose a Capital Improvement Assessment under this Community Operating Agreement that will result in an amount being due in any one fiscal year which exceeds twenty percent (20%) of the estimated annual Community Expenses for the Property, unless two-thirds of the Owners (excluding Founder) disapprove the Capital Improvement Assessment by written disapproval. Founder shall not be liable for any consequences resulting from the Owners' disapproval of the Capital Improvement Assessment. Any reserves collected by the Founder hereunder for the future maintenance and repair of the Neighborhood Community Areas, or any portion thereof, shall not be included in determining the foregoing limitation on any annual Capital Improvement Assessment.

5.6.2 All amounts collected as Capital Improvement Assessments under this Community Operating Agreement (a) may only be used for capital improvements on the Property, (b) shall be deposited by the Founder in a separate bank account to be held in trust for such purposes, (c) shall not be commingled with any other funds of the Founder, and (d) shall be deemed a contribution to the capital account of the Founder by the Owners.

5.7 Stewardship Fee. All Owners shall pay an annual "Stewardship Fee" in an amount determined by the Founder. The Stewardship Fee is a contribution to support the projects and programming of the Founder relating to environmental enhancement, conservation, and preservation on the Project. The Founder shall provide written notice of the annual Stewardship Fee at least thirty (30) days prior to the date set forth by the Founder for payment of the Stewardship Fee. If the Founder proposes to increase the Stewardship Fee by more than ten percent (10%) in any one year, then if two-thirds (2/3) of the Owners provide written notice objecting to the increase in the Stewardship Fee to the Founder within ten (10) days of receipt of the Founder's notice, the Founder shall revise the amount of the Stewardship Fee so that it is increased by not more than ten percent (10%).

5.7.1 Stewardship Contribution. In addition to the annual Stewardship Fee described in Section 5.7, to help fund the Founder's restoration, conservation, and preservation activities within the Project, the seller of a Parcel shall pay a "Stewardship Contribution" to the Founder whenever a Parcel is conveyed to a new Owner other than the Founder or its designated entities, in the amount of one percent (1%) of the purchase price. If the seller fails to pay the Stewardship

Contribution, the buyer shall be responsible for this contribution. A conveyance from the Founder or its designated entities to a new Owner shall not subject the seller or the buyer to the requirement to pay the Stewardship Contribution. The Founder shall have authority to enforce collection of Stewardship Contribution in the same manner as it does to enforce the collection of assessments.

5.8 Uniform Assessment. Except as provided in Section 5.3, this Section 5.8, Section 5.9 and Section 5.17, Regular Assessments, Stewardship Fees, and any Capital Improvement Assessments and Reconstruction Assessments shall be uniform for all Parcels.

5.9 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority or utility (whether public or private) shall be exempt from the Assessments and charges created in this Community Operating Agreement (“Exempt Property”) for so long as the properties continue to qualify as Exempt Property.

5.10 Time and Manner of Payment: Late Charges and Interest. Assessments and Individual Charges under this Community Operating Agreement shall be due and payable by Owners in such manner and at such times as the Founder shall designate. If not paid when due, each such Assessment and Individual Charge shall have added to it a late charge equal to 10% of the amount of Assessment or Individual Charge, or such other charge as the Founder may specify from time to time. Thereafter, any such delinquent Assessment or Individual Charge and the applicable late charge shall bear interest from the tenth day after the due date at the Default Rate of Interest until paid. Alternatively, the Founder may from time to time fix a schedule of late charges (not directly requiring the computation of changing interest rates) applicable to delinquent Assessments and Individual Charges. The Founder may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for reasonable attorneys' fees and other related costs incurred by the Founder as a result of the Owner's delinquency and, if any suit, action or arbitration proceeding is brought to collect and/or foreclose the Assessment Lien for any such Assessment or Individual Charge, there shall be added to the amount thereof the costs of suit and reasonable attorneys' fees to be fixed by the court, including any judgment or award rendered thereon.

5.11 No Offsets. All Assessments and Individual Charges provided for in this Community Operating Agreement shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Founder is not properly exercising its duties and powers as provided in this Community Operating Agreement; (b) Assessments for any period exceed Community Expenses; or (c) an Owner has made, or elects to make, no use of the Neighborhood Community Areas.

5.12 Homestead Waiver. To the extent permitted by law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of New Mexico now in effect, or in effect from time to time hereafter, to the extent of any liens created in accordance with this Community Operating Agreement, whether such liens are now in existence or are created at anytime in the future.

5.13 Reserves. Any reserves included in the Community Expenses, which are collected as part of the Regular Assessments provided for in this Community Operating Agreement, shall be deposited by the Founder in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Founder, except to the extent that the Founder's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of New Mexico or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Founder by Owners. The responsibility of the Founder shall be only to provide for such reserves, if any, as the Founder in good faith deems reasonable for the Property, and neither Founder nor any Related Entity shall have any liability to any Owner or to the Founder if reserves for the Property prove to be inadequate after the Founder satisfied the obligations provided for in this sentence.

5.14 Certificate of Payment. Any Person acquiring an interest in any Parcel shall be entitled to a certificate from the Founder setting forth the amount of due but unpaid Assessments and Individual Charges relating to the Parcel, if any. Such a Person shall not be liable under this Community Operating Agreement for, nor shall any lien attach to the Parcel in excess of, the amount set forth in the certificate, except for Assessments and Individual Charges that occur or become due after the date of the certificate and any interest, costs, attorneys' fees and any late charges related to such Assessments and Individual Charges.

5.15 Enforcement of Lien. The lien provided for in Section 5 may be foreclosed by the Founder in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of New Mexico. All of the provisions of Section 5 relating to the enforcement of the lien provided for in this Community Operating Agreement (including, but not limited to, the provisions of this Section 5.15), as well as the provisions of Section 17, shall apply with equal force in each other instance provided for in this Community Operating Agreement, the Rules and Regulations or Community Development Standards wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the lien provided for in Section 5. Nothing in this Community Operating Agreement shall be construed as requiring that the Founder take any action required hereunder in any particular instance, and the failure of the Founder to take such action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.

5.16 Pledge of Assessment Rights as Security. The Founder shall have the power to pledge its assessment powers and rights provided for in this Community Operating Agreement as security; provided, however, that any such pledge occurring after the Transition Date shall require (a) the prior affirmative vote or written assent of a majority of Owners (excluding the Founder), and (b) the consent of the Founder (so long as the Founder or any Related Entity Owner owns any property subject to this Community Operating Agreement).

5.17 Exemption of Unsold Parcels. Notwithstanding anything in Section 5 or in Section 7 to the contrary, prior to the Transition Date, no Assessments or Individual Charges shall be levied under this Community Operating Agreement upon, or payable with respect to, any Parcel owned by or leased to Founder or any Related Entity Owner or by any trustee for the Founder or any Related Entity Owner, until the Parcel has been conveyed to a Retail Purchaser.

SECTION 6 - INSURANCE

6.1 Authority to Purchase. The Founder shall have the power and authority to purchase and maintain such public liability, casualty, officers' and directors' liability and indemnity, worker's compensation and other insurance, and such fidelity bonds as the Founder shall deem necessary or appropriate from time to time with respect to the Property. Policies shall be on such terms and conditions as the Founder shall direct. All such policies and claims thereunder shall be administered by the Founder. To the extent reasonably available, the Founder shall maintain at least \$1,000,000 (combined limits) of insurance against liability incurred as a result of death or injury to Persons or damage to property on the Neighborhood Community Areas. The Founder shall make information available to Owners regarding the coverage of the Founder's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured by the Founder.

6.2 Owner's Responsibility. It shall be each Owner's responsibility to provide any insurance on his own Parcel, additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Property, his personal liability to the extent not covered by public liability insurance obtained by the Founder, and such other insurance as the Owner desires.

6.3 Non-Liability of the Founder. The Founder and Related Entities shall not be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner, Mortgagee and other Person to ascertain the coverage and protection afforded by the Founder's insurance and to procure and pay for such additional insurance coverage and protection as the Owner, Mortgagee or other Person may desire.

6.4 Premiums. Premiums for insurance policies purchased by the Founder for the Property shall be paid by the Founder as a Community Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Parcel or its appurtenances, or of the Neighborhood Community Areas, by an Owner, or an Occupant of the Owner's Parcel, or the agent, employee or invitee of either, shall be assessed against the Owner as an Individual Charge.

6.5 Insurance Claims. The Founder is hereby irrevocably appointed and authorized, subject to the provisions contained in this Community Operating Agreement, to adjust all claims arising under insurance policies purchased by the Founder for the Property and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Founder, at its discretion, may appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Founder for the Property.

6.6 Benefit. Except as otherwise provided in this Community Operating Agreement, all insurance policies purchased by the Founder with respect to the Property shall be for the benefit of, and any proceeds of insurance received by the Founder or any Insurance Trustee shall be held or disposed of for, the Founder and the Owners, or other interested Persons, as their interests may appear.

SECTION 7 - DAMAGE AND DESTRUCTION

7.1 Duty of the Founder. In the event of partial or total destruction of any improvements on the Neighborhood Community Areas of the Property, it shall be the duty of the Founder to make reasonable repairs as promptly as practical, subject and in accordance with Section 7. The proceeds of any casualty insurance maintained for the Property in accordance with this Community Operating Agreement shall be used to the extent available for such purposes, subject to the prior rights of Mortgagees whose interests may be protected by the policies.

7.2 Automatic Reconstruction. If the amount available from the proceeds of any insurance policies for restoration and repair of the Property, together with any uncommitted or unreserved capital of the Founder for the Property is at least 75 percent of the estimated cost of restoration and repair, the affected Neighborhood Community Areas shall be repaired and a "Reconstruction Assessment" shall be levied by the Founder against each Owner in his Proportionate Share for each Parcel he owns to provide the necessary funds for restoration and repair as a supplement to funds otherwise available for such purposes. The Founder shall then cause the damaged or destroyed Neighborhood Community Areas to be restored or repaired to substantially the condition they were in prior to the destruction or damage.

7.3 Vote of Owners. If the amount available from the proceeds of any insurance policies for restoration and repair of the Property, together with any uncommitted or unreserved capital of the Founder for the Property, is less than 75 percent of the estimated cost of restoration and repair, the Neighborhood Community Areas shall be replaced or repaired unless two-thirds of the Owners disapprove of the replacement or repair in writing within ten (10) days of receipt of a request by the Founder to the Owners of approval for the repair or replacement. If the Owners do not disapprove the proposed replacement or repair, the Founder shall levy a Reconstruction Assessment against each Owner in his Proportionate Share for each Parcel he owns, and cause the damaged or destroyed Neighborhood Community Areas to be repaired or restored as closely as practical to their former condition prior to the destruction or damage. If the Owners disapprove of the restoration and repair of the damaged or destroyed improvements on the Neighborhood Community Areas as provided above, the Neighborhood Community Areas so damaged or destroyed shall be cleared and landscaped for Community Area use or other use determined by the Founder and the costs thereof shall be paid from the insurance proceeds (to the extent available).

7.4 Excess Insurance Proceeds. In the event any excess insurance proceeds for the Property remain after any reconstruction by the Founder in accordance with this Section, the Founder, in its sole discretion, may retain such sums for the Property in the general funds of the Founder or may distribute all or a portion of the excess to the Owners in the Property in their Proportionate Shares, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the Founder and subject to any requirements of applicable law. The rights of an Owner or the Mortgagee of a Parcel to any distribution shall be governed by the provisions of the Mortgage encumbering the Parcel.

7.5 Use of Reconstruction Assessments. All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in Section 7 and shall be deposited by the Founder in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Founder and shall be deemed a contribution to the capital account of the Founder by the Owners. Any Reconstruction Assessment for the Property shall be secured by the lien provided for in Section 5.

7.6 Insurance Proceeds Trust. Upon receipt by the Founder of any insurance proceeds for the Property, the Founder may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Santa Fe County, New Mexico, designated by the Founder to be trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Community Operating Agreement and which shall be entered into between the Insurance Trustee and the Founder. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent

with procedures then followed by prudent lending institutions in Santa Fe County, New Mexico.

SECTION 8 - EMINENT DOMAIN

8.1 Definition of Taking. The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Neighborhood Community Areas of the Property.

8.2 Representation in Condemnation Proceedings. The Owners hereby appoint the Founder to represent all of the Owners in connection with any threatened Taking. The Founder shall act in its sole discretion with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

8.3 Award for Neighborhood Community Areas. The Founder may, in its sole discretion, retain any award received by the Founder on account of the Taking in the general funds of the Founder for the Property, expend the funds for repair of Neighborhood Community Areas of the Property, or distribute all or any portion thereof to the Owners in their Proportionate Shares, or as their interests otherwise may appear, subject to any requirements of applicable law. The rights of an Owner and the Mortgagee of his Parcel to any distribution shall be governed by the provisions of the Mortgage encumbering the Parcel.

SECTION 9 - MAINTENANCE, REPAIRS AND REPLACEMENTS

9.1 Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Parcel, including, but not limited to, the maintenance requirements set forth in this Community Operating Agreement.

9.2 Founder's Responsibility. Except as otherwise provided in this Community Operating Agreement to the contrary, maintenance, repairs and replacements of the Neighborhood Community Areas of the Property shall be furnished by the Founder as part of the Community Expenses, subject to this Community Operating Agreement and the Rules and Regulations. If, due to the act or neglect of an Owner or Occupant of an Owner's Parcel, or the invitee, guest or other authorized visitor of either, damage is caused to the Neighborhood Community Areas or to a Parcel or Parcels owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Community Expense, then the Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Founder, to the extent not covered by the Founder's insurance. This obligation shall be an Individual Charge secured by the lien provided for in Section 5. The Founder shall also have the right to maintain, repair and replace landscaping on any portion of a Parcel outside of the walls or other barriers defining the private portions of

the Parcel, and to install such additional landscaping in these areas as the Founder may from time to time deem to be appropriate or desirable in its sole discretion.

9.3 Right of Access. An authorized representative of the Founder, and all contractors, repairmen or other agents employed or engaged by the Founder, shall be entitled to reasonable access to each of the Parcels as may be required in connection with maintenance, repairs or replacements of or to the Neighborhood Community Areas or landscaping on Parcels in accordance with Section 9.2, and any equipment, facilities or fixtures affecting or serving other Parcels and the Neighborhood Community Areas, and to perform any of the Founder's duties or responsibilities hereunder, including, but not limited to, the administration and enforcement of the Community Development Standards.

9.4 Trash and Garbage Removal. It shall be the responsibility of each Owner to contract for and utilize such trash and garbage removal as may be necessary to keep the Owner's Parcel and any Neighborhood Community Areas subject to the Owner's control, clear of trash, garbage and debris and otherwise in compliance with applicable requirements of this Community Operating Agreement. If any Owner fails to cause the proper removal of such trash and garbage, the Founder may cause the trash and garbage to be removed and bill the cost of enforcement as an Individual Charge against the Owner. Solid waste must be removed by licensed haulers who shall carry it to an approved landfill site certified by the New Mexico Environment Department.

9.5 Private Street Maintenance/Repair. Subject to the provisions of Section 9.2 for the recovery of certain costs, the Founder shall maintain and repair the Private Streets in the Property. Maintenance and repair levels for base course roads with adjacent open ditch drainage will vary greatly, depending on weather and traffic burdens and will have to be adjusted annually to reflect actual physical conditions and experience, but approximate guidelines or estimated schedules are as follows:

9.5.1 Drainage ditches - regrade twice a year and clean out any silted-up culverts.

9.5.2 Snow removal - plow approximately five times a year.

9.5.3 Base course road surfacing - The following schedule can be anticipated:

(i) Re-grade the base course surface semi-annually;

(ii) Patch potholes annually;

(iii) Supplement the compacted base course driving surface 1-2 inches every three to four years; and

- (iv) Provide full base course overlay (8 inch loose/5 inches compacted base course thickness) every twelve to fifteen years.

SECTION 10 - ARCHITECTURAL AND LANDSCAPE CONTROL

The Property is subject to the architectural and landscape control as provided for in the Community Development Standards, which includes but is not limited to the Design Standards, as they may be amended from time to time. In addition to the requirements of this Community Operating Agreement, all Owners must comply with the Community Development Standards for any construction on and use of the Property, and all applicable federal, state, and local laws governing the construction and use of the Property, including but not limited to, building codes and laws addressing stormwater treatment and management.

SECTION 11 - USE AND OCCUPANCY RESTRICTIONS

11.1 Residential Use. Each Parcel may be used only for residential purposes and Recreational Uses. No business or commercial building may be erected on any Parcel and no Business Use or other nonresidential use may be made of any part thereof. No temporary buildings, structures or trailers may be erected, placed or maintained on any Parcel except as expressly permitted by, and in compliance with, the Community Development Standards. Nothing contained in this Community Operating Agreement shall be deemed to limit Founder's rights as set forth in Section 15.

11.2 Violation of Law or Insurance. No Owner shall permit anything to be done or kept in or upon his Parcel or in or upon any Neighborhood Community Areas that will result in the cancellation, or increase in premium, or reduction in coverage of insurance carried by the Founder or that would be in violation of any law or other applicable requirements of governmental authorities.

11.3 Signs. No sign of any kind shall be displayed to the public view from any Parcel or any Community Area without the approval of the Design Review Committee, except: (a) such signs as may be used by the Founder in connection with the development, management, administration and sale of Parcels, residences and other property in the Property; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and regulation of Neighborhood Community Areas; and (d) such signs as may be approved by the Founder or the Design Review Committee in connection with or related to marking or otherwise identifying Trails and permitted uses thereof.

11.4 Animals. No animals, including, but not limited to, domestic farm animals, fowl or poisonous reptiles of any kind, may be kept, bred or maintained, or be allowed to visit or remain in any Parcel or in or upon any Community Area, except a reasonable number of commonly accepted household pets in accordance with the Rules and Regulations. No animals shall be kept, bred or raised within the Property for

commercial purposes. In no event shall any domestic pet (including, without limitation, dogs and cats) be allowed to run free away from its owner's Parcel without a leash or other form of physical or demonstrated voice command restraint, or conduct itself so as to create an unreasonable annoyance. Owners shall exercise due care to prevent dogs and other animals on their Parcels from harassing or otherwise unreasonably annoying people and animals using Trails. The Founder reserves the right to remove feral cats and wild dogs from the Project. The Founder may assume that any cat or dog without an identification tag or tattoo that is running free on the Project is a feral cat or a wild dog, respectively.

11.5 Nuisances: Construction Activities.

11.5.1 No Owner shall permit or suffer anything to be done or kept about or within his Parcel, or on or about the Property, which will unreasonably obstruct or unreasonably interfere with the rights of other Owners, Founder, Occupants or authorized Persons to use and enjoy the Neighborhood Community Areas, or annoy them by unreasonable noises or otherwise. Owners shall not commit or permit any nuisance or commit or suffer any illegal act to be committed on their Parcels or in the Neighborhood Community Areas. Each Owner shall comply with the Rules and Regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

11.5.2 Normal construction activities and parking in connection with the building of improvements on a Parcel shall not be considered a nuisance or otherwise prohibited by this Community Operating Agreement unless they are a violation of the Community Development Standards or requirements of the Design Review Committee, but Parcels and Neighborhood Community Areas shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Parcel during construction of improvements may be kept only in areas approved by the Design Review Committee, which also may require screening of the storage areas. The Founder, in its sole discretion, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Community Operating Agreement.

11.6 Boats and Motor Vehicles. Except as specifically permitted by the Rules and Regulations, (a) no boats, trailers, buses, motor homes, campers or other vehicles shall be parked or stored in or upon the Neighborhood Community Areas or upon a Parcel except as may be permitted by the Community Development Standards or as permitted under (c) below; (b) no vehicle shall be repaired, serviced or rebuilt in any Parcel or upon the Neighborhood Community Areas; and (c) nothing shall be parked on the Private Streets except in such parking areas as may be designated by the Design

Review Committee or the Plat (or any amendment or supplement thereto). The Founder may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

11.7 Mining; Wells; Potable Water.

11.7.1 No portion of the Property shall be used in any manner to explore for, or remove, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

11.7.2 No wells for the pumping or removal of water shall be placed or maintained by an Owner on the Property. Only wells developed or installed by the Founder, as set forth in Section 11.7.3 below, are allowed on the Property.

11.7.3 Owners, shall obtain potable water from wells developed by the Founder located in the Neighborhood Community Areas or from other areas within the Galisteo Basin Preserve. Owners shall be responsible for the costs of operation, maintenance, and replacement of the wells and associated piping and pumps. The Proportionate Share of the costs of such operation, maintenance, and replacement shall be an Individual Charge to each Owner of a Parcel obtaining water from the wells in the Neighborhood Community Areas or from other areas within the Galisteo Basin Preserve.

11.7.4 The Founder shall have the right to perform remote monitoring of each Owner's water usage from the wells in the Neighborhood Community Areas or from other areas within the Galisteo Basin Preserve. The Founder shall have the right to charge a water use surcharge for any Owner who exceeds the lesser of his water allocation as set forth in the Water Use Standards described in Exhibit C to this document, which exhibit is hereby incorporated into this Community Operating Agreement, or any water allocation for the Owner's Parcel required by the County or the State of New Mexico. The water use surcharge shall be determined by the Founder and shall be an Individual Charge to the Owner exceeding his allocation. The Founder shall provide notice of the water use surcharge for the upcoming Fiscal Year to Owners prior to the beginning of each Fiscal Year. The water use surcharge shall be a per gallon charge for usage exceeding the Owner's allocation.

11.8 Safe Condition. Without limiting any other provision in Section 11, each Owner shall maintain and keep his Parcel in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Parcels or the Neighborhood Community Areas at all times.

11.9 No Further Subdivision; Compounds.

11.9.1 No Parcel shall be divided or subdivided after it is purchased by an Owner. However, without the approval or consent any other Owner, the Founder (a) may relocate the property lines of any Parcel(s) owned by the Founder or by any Related Entity Owner (with the consent of the Owner) and (b) may replat or re-subdivide Parcels owned by the Founder or by any Related Entity Owner (with the consent of the Owner), if the adjustments or other changes are approved by the County.

11.9.2 An Owner may own more than one Parcel that, if contiguous, may be combined into a single home site with the consent of the County, the Design Review Committee and the Founder (until the Transition Date occurs and the Founder and Related Entity Owners no longer own any property subject to this Community Operating Agreement). Any such combination of Parcels shall not reduce or alter the voting rights obtained by ownership of each Parcel nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Parcels in accordance with the terms of this Community Operating Agreement in the absence of combination. The Assessments and Individual Charges attributable to each of the former separate Parcels shall be a lien, as provided in Section 5, upon the entire combination of Parcels held by the Owner. Notwithstanding anything to the contrary in this Section 11.9.2, the Founder reserves the right, at its sole discretion, to combine Parcels such that Assessments and voting rights are reduced to the Assessments and voting rights that would be applicable to one Parcel.

11.9.3 The Owners of two or more contiguous Parcels may, with the consent of the County and the Design Review Committee and with the consent of the Founder (until the Transition Date occurs and the Founder and Related Entity Owners no longer own any property subject to this Community Operating Agreement), replat their Parcels as a Compound. The lien provided in Section 5 as to each replatted Parcel shall also extend to the interest of the Owner in any such common facilities. If one Owner wishes to combine Parcels, or if two or more Owners wish to replat Parcels as a Compound, in a manner that eliminates the need for a portion of the Neighborhood Community Areas owned by the Founder (for example, where a cul-de-sac is no longer necessary), and if the combination or Compound and abandonment of Neighborhood Community Areas is approved by the Design Review Committee and the County, and by the Founder (until the Transition Date occurs and the Founder and Related Entity Owners no longer own any property subject to this Community Operating Agreement), then a portion of the Neighborhood Community Areas as jointly specified by the Founder and the County (if its consent is required) may be deeded by the Founder to the Owner or Owners.

11.9.4 The Founder may combine Parcels owned by the Founder and/or any Related Entity Owner and reduce Assessments on combined Parcels to the level

applicable to a single Parcel with the consent of the Parcel Owner but without the approval or consent of any other Owner. The Founder may, at any time, without the approval or consent of any other Owner, assign (in whole or in part) to the Design Review Committee the approval rights reserved to the Founder in this Section.

11.10 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on a Plat, or other recorded instrument, as a "drainage easement" except that, with the prior consent of the County and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

11.11 Rental of Parcels. An Owner who leases or otherwise grants occupancy rights to his Parcel to any Person shall be responsible for assuring compliance by the Occupant with all of the provisions of this Community Operating Agreement, the Rules and Regulations, and the Community Development Standards and shall be jointly and severally responsible for any violations by the Occupant thereof.

11.12 Prohibited Vehicles. Unlicensed vehicles, including without limitation, all-terrain vehicles, are prohibited on the Private Roads of the Property except as may be expressly permitted from time to time by the Rules and Regulations. The Rules and Regulations may also from time to time prohibit from the Private Roads of the Property other types of vehicles deemed by the Founder to be inappropriate.

11.13 Stormwater Compliance. The Founder has obtained a permit pursuant to the National Pollution Discharge Elimination System ("NPDES") for the Property. As a condition of the NPDES permit, the Founder has prepared a Stormwater Pollution Prevention Plan for the Property. Each Owner shall be responsible for compliance with the applicable provisions of the NPDES permit and the SWPPP, as such may be amended from time to time, on his Parcel. No Owner shall conduct or permit to be conducted activities on his Parcel that cause another Owner's stormwater pollution control to be ineffective. Each Owner must maintain any and all erosion and sediment control measures in his Parcel in effective operating condition, and each Owner must prevent litter, construction debris, and construction chemicals from becoming a pollution source in stormwater discharges. The Founder may require each Owner to execute documents acknowledging the Owner's understanding of the permit and SWPPP requirements as they relate to that Owner's Parcel. Each Owner shall be responsible for his builder's compliance with this Section 11.13. *Owners may be required to execute a separate SWPP management agreement at or prior to plan approval in accordance with the Community Development Standards.*

11.14 Enforcement. The Founder or its authorized agents may enter any Parcel in which a violation of these restrictions exists and may correct the violation at the expense of the Owner. The Founder's expenses, and such penalties as may be imposed in accordance with the Rules and Regulations or the Community Development Standards, shall be an Individual Charge secured by a lien upon the Parcel enforceable in accordance with the provisions of Section 5 of this Community Operating Agreement. All remedies described in Section 17 of this Community Operating Agreement and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Member, Occupant or other Person of any provision of Section 11.

11.15 Modification. The Founder may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Property and the Parcels by reasonable Rules and Regulations of general application for the Property adopted by the Founder from time to time

SECTION 12 - EQUESTRIAN ACTIVITIES

12.1 Equestrian Trails. Equestrian trails ("Equestrian Trails") may be established within the Neighborhood Community Areas from time to time. Equestrian Trails shall be designated on the Plat, by an amendment to the Plat, by notice from the Founder to Owners, or by signs placed by the Founder on and about the Neighborhood Community Areas. Except to the extent otherwise set forth in rules established by the Founder, Private Roads are not expected to include Equestrian Trails. It is contemplated that (except as provided in Section 12 of this Community Operating Agreement) Equestrian Trails will be restricted to use by Owners and Occupants and their permitted guests, who are walking or hiking on foot, or riding or walking with not more than one horse or llama per person, and that other uses may be limited or prohibited entirely by the Founder. The rules for use of Equestrian Trails shall be established from time to time by the Founder, in its sole discretion. Access to Equestrian Trails from Parcels may from time to time be limited to specific access points, determined by the Design Review Committee, in its sole and absolute discretion.

12.2 Use of Equestrian Trails. The Founder, though under no obligation to do so, may restrict or otherwise regulate the use of Equestrian Trails, or any portion thereof, as it deems desirable or appropriate from time to time to minimize interference with uses permitted pursuant to Section 12 and subject to any rights arising under Section 12. By use of Equestrian Trails, Owners, Occupants, and their permitted guests, and other Owners and Persons within the Project as specifically permitted by the Founder, acknowledge that certain risks are inherent in using Equestrian Trails. Owners and Occupants with use rights provided in Section 12, and permitted guests and other Owners and other Persons who choose to use Equestrian Trail expressly assume the risks of such occurrences and injuries. No claim or cause of action for any harm, damage or injury to any person, animal, or property of any kind caused or occasioned

by use of Equestrian Trails shall be brought against the Founder, Related Entities, or any owner thereof, and all such individuals and entities are hereby released from all such claims and causes of action. In addition, Owners shall indemnify and hold harmless the Founder, Related Entities, and any owner of an Equestrian Trail from any and all such claims and causes of action.

12.3 Prohibited Areas. Horses or llamas shall not be allowed in the Neighborhood Community Areas except on specifically designated Equestrian Trails.

12.4 Modification. The Founder may modify or waive the restrictions set forth in Section 12 or otherwise restrict and regulate the presence of animals on the Property without amending this Community Operating Agreement, by reasonable Rules and Regulations of general application for the Property adopted by the Founder from time to time.

12.5 Equestrian Facilities in the Galisteo Basin Preserve. The Founder reserves the right, at its sole discretion, to provide stables or other equestrian facilities, in addition to other agricultural activities and uses, in the Galisteo Basin Preserve for use by the Owners, Occupants, and the invitees of the Owners and Occupants of Southern Crescent, as well as for the Owners, Occupants, and the invitees of other communities associated with the Project, as well as for members of the public.

SECTION 13 - TRAILS

13.1 Trails. Trails, in addition to the Trails described in Section 12, may be established within the Neighborhood Community Areas from time to time. Trails shall be designated on the Plat, by an amendment to the Plat, by notice from the Founder to Owners, or by signs placed by the Founder on and about the Neighborhood Community Areas. Except to the extent otherwise set forth in rules established by the Founder, Private Roads are not expected to include Trails. There may be a mix of Trails open to the public and Trails open to use only by Owners and other Persons as approved by the Founder within the Neighborhood Community Areas. The rules for use of Trails (whether open to the public or otherwise) shall be established from time to time by the Founder, in its sole discretion. Access to Trails from Parcels may from time to time be limited to specific access points, determined by the Design Review Committee, in its sole and absolute discretion.

13.2 Use of Trails.

13.2.1 It is contemplated that Trails that serve the Neighborhood Community Areas will be restricted to use by the Owners of Property and Galisteo Basin Preserve Owners and Occupants and their permitted guests, and adjoining property owners, and other Persons as approved by the Founder. Permitted uses include hiking, biking (non-motorized only), and walking of household pets. Dogs must be under control (by voice command or on leash) at all times. Other uses

may be limited or prohibited entirely by the Founder. The Founder, though under no obligation to do so, may restrict or otherwise regulate the use of Trails, or any portion thereof, as it deems desirable or appropriate from time to time to minimize interference with uses permitted in accordance with this Section. Bicycle riders or hikers using Trails shall not stray onto other portions of the adjacent Neighborhood Community Areas or onto Parcels.

13.2.2 By use of Trails, Owners, Occupants, and their permitted guests acknowledge that certain risks are inherent in using Trails. Owners and Occupants and other permitted users who choose to use the Trails expressly assume the risks of such occurrences and injuries. No claim or cause of action for any harm, damage or injury to any person, animal, or property of any kind caused or occasioned by use of the Trails shall be brought against the Founder, Related Entities, or any owner of the Trails, and all such individuals and entities are hereby released from all such claims and causes of action.

SECTION 14 - RIGHTS OF MORTGAGEES

14.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, the following provisions shall apply to and benefit each holder of a First Mortgage (and, in the case of Sections 14.4 and 14.6, to the holder of any Mortgage) upon a Parcel.

14.2 Subordination of Lien.

14.2.1 Any lien that arises against a Parcel by reason of the failure or refusal of an Owner to make timely payment of any Assessment or Individual Charge shall be subordinate to the lien of a prior recorded First Mortgage on the Parcel, acquired in good faith and for value, except to the extent the lien secures the amount of any unpaid Assessment or Individual Charge (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) that accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Parcel, whichever occurs first. If any lien for unpaid Assessments or Individual Charges that become payable after recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Parcel is not extinguished, to the extent it secures the unpaid Assessments or Individual Charges, by the process by which the First Mortgagee acquired title to the Parcel, neither the First Mortgagee nor a third party purchaser shall be liable for the unpaid Assessments or Individual Charges, and, upon written request to the Founder by the First Mortgagee or purchaser, the lien shall be released in writing by the Founder to the extent it secures the unpaid Assessments or Individual Charges.

14.2.2 Nevertheless, in the event the Owner against whom the original Assessment or Individual Charge was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Founder, or by the Founder, for the respective Parcel's Assessment or Individual Charge including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or Individual Charge shall continue to exist as the personal obligation of the defaulting Owner of the respective Parcel to the Founder, and the Founder may use reasonable efforts to collect it from the Owner even after the Owner has conveyed the Parcel to a new Owner. Any unpaid Assessments and Individual Charges that are extinguished in accordance with Section 14.2 may also be reallocated by the Founder among all Owners as part of the Community Expenses. Except as above provided (and except for liens for taxes and other public charges which by applicable law are made prior and superior), the lien provided for in Section 5 shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Parcel.

14.3 No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, Rules and Regulations under this Community Operating Agreement, or any management agreement, except for those matters that are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in Section 14.

14.4 Enforcement After Foreclosure Sale. An action to abate the breach of any of the covenants, conditions, restrictions, and reservations in this Community Operating Agreement may be brought against any Person who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and against the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Parcel.

14.5 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale in accordance with power of sale conferred under a deed of trust and in accordance with law, the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as an Owner in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Founder written notice of its claimed rights and such evidence as the Founder may reasonably request demonstrating the existence of the claimed rights.

14.6 Subject to Community Operating Agreement. At such time as a Mortgagee comes into possession of or becomes record Owner of a Parcel, whichever first occurs, the Mortgagee shall be subject to all of the terms and conditions of this Community Operating Agreement including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, in the same manner as any other Owner.

SECTION 15 - EXEMPTION OF THE FOUNDER FROM RESTRICTIONS

None of the covenants, conditions, restrictions, easements or other provisions contained in this Community Operating Agreement shall be construed or deemed to limit or prohibit any act of the Founder, its employees, agents and contractors, or parties designated by it in connection with (a) the administration, management, construction, completion, sale or leasing of the Parcels, Neighborhood Community Areas, the Property, and residences constructed by the Founder, (b) the administration, management, development or other activities with respect to facilities outside the Property, or (c) the development and operation of equestrian facilities inside or outside the Property.

SECTION 16 - OPERATING MANAGER

For the efficient management of the Property, the Founder reserves the right to delegate and assign certain powers to an operating manager of Founder's choice. Those powers include, without limitation, (a) owning, managing, maintaining and administering the Neighborhood Community Areas, (b) administering and enforcing these covenants, conditions, restrictions and easements, (c) collecting and disbursing Assessments and other charges as set forth in this Community Operating Agreement, and (d) performing such other acts as are provided for in this Community Operating Agreement or that generally benefit the Property and the owners of any interests in the Property.

SECTION 17 - REMEDIES

17.1 General Remedies.

17.1.1 In the event of any default by any Owner, Occupant or other Person under the provisions of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, the Founder, or its successors or assigns, or its agents, shall have each and all of the rights and remedies that may be provided for in this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, or which may be available at law or equity.

17.1.2 The Founder and its successors or assigns or its agents may prosecute action or other proceedings against the defaulting Owner, Occupant or other Person for an injunction, whether affirmative or negative, or for enforcement or

foreclosure of the lien in this Community Operating Agreement under the laws of the State of New Mexico, and the appointment of a receiver for the Parcel, or for damages or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of the Parcel and to rent the Parcel and apply the rents received to payment of unpaid Assessments and Individual Charges and interest accrued thereon, and to sell the Parcel in accordance with this Section 17.1.2, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Parcel or the solvency of the Owner. The proceeds of any such rental or sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, expert witness fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments and Individual Charges under this Community Operating Agreement and any liens shall be paid to the Owner. Upon the confirmation of the sale, the purchasers thereupon shall be entitled to a deed to the Parcel and to immediate possession of the Parcel and may apply to the court for a writ of restitution (or comparable order) for the purpose of acquiring possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Community Operating Agreement.

17.2 Removal of Animals. In addition to, and not in lieu of, any other rights or remedies that may be provided for in this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, or that may be available at law or equity, the Founder, so long as the Founder or any Related Entity Owner owns any property subject to this Community Operating Agreement, or the Founder may require or cause the removal of all or any animals from a Parcel, a Trail, or an Equestrian Trail upon the violation of the terms and provisions of this Community Operating Agreement by an Owner, Occupant or other Person.

17.3 Expenses of Enforcement. All expenses of the Founder, or other Person granted rights of enforcement under this Community Operating Agreement, in connection with any action or proceeding described or permitted by Section 17, including court costs, reasonable attorneys' fees, expert witness fees, costs and expenses incurred in connection with the removal of animals, and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against the defaulting Owner and shall be an Individual Charge against the Owner and his Parcel and the Founder shall have a lien as provided in Section 5 therefore. In the event of any such default by an Owner or other Person, the Founder and the manager or managing agent of the Founder, if so authorized by the Founder, shall have the authority to correct the default and to do whatever may be necessary for such purposes, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner's Parcel as provided in

Section 5. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Founder.

17.4 Legal Action. In addition to any other remedies available under Section 17, if any Owner (either by his conduct or by the conduct of any Occupant of his Parcel or family member, guest, invitee or agent) violates any of the provisions of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, as then in effect, then the Founder and any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for a judgment or injunction against the Owner, or such other Person, requiring the defaulting Owner or other Person to comply with the provisions of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, and granting other appropriate relief, including money damages.

17.5 Effect on Mortgage. Any breach of the covenants, restrictions, reservations, conditions and servitudes provided for in this Community Operating Agreement, or any right of reentry by reason of such a breach, shall not defeat or adversely affect the lien of any Mortgage upon any Parcel, but, except as specifically provided in this Community Operating Agreement, each and all of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Parcel whose title to the Parcel is acquired by sale, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

17.6 Limitation on Founder's Liability. It is expressly agreed, and each Owner, by accepting title to a Parcel and becoming an Owner, and each other Person acquiring an interest in the Property, acknowledges and agrees that neither the Founder (including, but not limited to, any assignee of the interest of the Founder hereunder) nor any Related Entity (or any partner, shareholder trustee, officer, director, principal or similar Person holding an interest or position in any such assignee of the interest of the Founder) shall have any personal liability to any Owner or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Community Operating Agreement or the Design Review Committee except to the extent of its interest in the Property; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

SECTION 18 - AMENDMENT

18.1 Amendment to Community Operating Agreement. Amendments to this Community Operating Agreement shall be made by an instrument in writing entitled "Amendment to Community Operating Agreement" which sets forth the entire amendment. Prior to the Transition Date, amendments may be adopted only by the Founder as provided in Section 18.5 (and subject to any provisions of Section 18.5 requiring the consent of Owners). After the Transition Date, amendments may be

adopted only with the affirmative vote or written consent of a majority of Owners (except the Founder) and with the affirmative vote or written consent of the Founder (so long as the Founder or any Related Entity Owner owns any property subject to this Community Operating Agreement). In all events, the amendment when adopted shall bear the signature of the president of the Founder and shall be attested by the secretary of the Founder, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Founder. Amendments once properly adopted shall be effective upon recording in the appropriate governmental offices, or at such later date as may be specified in the amendment.

18.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Community Operating Agreement properly adopted will be completely effective to amend any and all of the covenants, conditions, restrictions and easements contained in this Community Operating Agreement that may be affected and any or all clauses of this Community Operating Agreement or the Plat, unless otherwise specifically provided in the Section being amended or the amendment itself.

18.3 Amendment of Plat. Except as otherwise provided in this Community Operating Agreement, the Plat may be amended by revised versions or revised portions of the Plat referred to and described as to effect in an amendment to this Community Operating Agreement adopted as provided for in this Community Operating Agreement. Such an amendment to the Plat shall be effective, once properly adopted, upon recordation in the appropriate governmental office in conjunction with an amendment to this Community Operating Agreement.

18.4 Required Approvals. Notwithstanding the provisions of the foregoing subsections of Section 18:

18.4.1 If this Community Operating Agreement or any applicable provision of law requires the consent or agreement of all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Community Operating Agreement, then any instrument changing, modifying or rescinding any provision of this Community Operating Agreement with respect to such action shall be signed by all Owners and/or all lienholders and trustees and/or beneficiaries under trust deeds, or the specified percentage thereof, as required by this Community Operating Agreement or by law.

18.4.2 The provisions of this Community Operating Agreement may not be amended at any time (including after the Transition Date) to materially and adversely affect Founder without the written consent of Founder. Founder may, but shall not be obligated to, release any or all of its consent rights under this Community Operating Agreement by recorded instrument.

18.5 Founder's Right to Amend. Notwithstanding any other provision of Section 18, until the later of the Transition Date, Founder reserves the right to amend this Community Operating Agreement or the Plat without the approval of the other Owners; provided, however, that no such amendment shall have the effect of changing the boundaries of an Owner's Parcel without the consent of the Owner; and provided, further, that after the conveyance of the first Parcel to a Retail Purchaser, the Founder may not amend the following provisions of this Community Operating Agreement without the approval in writing of a Majority of the Owners (excluding the Founder): first sentence of Section 5.3.1 to advance the date upon which Regular Assessments begin; the first sentence of Section 5.6 to permit Capital Improvement Assessments prior to the year 2010; this Section 18.5 to decrease the rights of Owners hereunder; or Section 18 to decrease the initial effective period of this Community Operating Agreement.

SECTION 19 - TERM; TERMINATION

This Community Operating Agreement shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect until twenty years from the date of recording of this Community Operating Agreement. From then on, this Community Operating Agreement shall continue for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Community Operating Agreement, to terminate this Community Operating Agreement by written consent of a majority of Owners. This Community Operating Agreement may be terminated and the Plat may be withdrawn by the Founder without the approval or consent of any other Person if such action is taken before there are any Owners. Thereafter, this Community Operating Agreement may be terminated at any time upon written consent by the Owners in favor of termination (a) prior to the Transition Date, by 90% of the Owners, or (b) after the Transition Date, by 90 % of all of the Owners except the Founder and by the Founder. The Founder may, but shall not be obligated to, release its consent rights under item (b) of the preceding sentence by recorded instrument. No consent to terminate this Community Operating Agreement shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to the Owners' consent to 180 days after the Owners' consent, from the holders of recorded First Mortgages on 75 % of the Parcels upon which there are such recorded First Mortgages. If the necessary consents are obtained, the Founder shall cause to be recorded with the County Recorder of Santa Fe County, New Mexico, and/or other appropriate governmental offices, a Certificate of Termination, duly signed by the president or a vice president of the Founder and attested by the secretary or an assistant secretary of the Founder, with their signatures acknowledged. Thereupon, this Community Operating Agreement, as of the date of recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect.

SECTION 20 - GENERAL PROVISIONS

20.1 Notices. Notices to the Founder provided for in this Community Operating Agreement, the Bylaws, or Rules and Regulations, shall be in writing and shall be addressed to the Founder at 117 N. Guadalupe Street, Suite C, Santa Fe, New Mexico 87501. The Founder may designate a different address or addresses for notice under this Community Operating Agreement by giving written notice to all Owners of Parcels in the Property. All notices to Owners shall be to their respective Parcels or to the last address shown on the records of the Founder. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Founder. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person.

20.2 Assignment and Conveyance. The Founder reserves the right to assign or convey any or all of its rights, responsibilities, duties, easements, and obligations under this Community Operating Agreement, as it, in its sole discretion, shall determine, to another entity or homeowners' association.

20.2.1 An assignment by recorded instrument of all of the Founder's rights shall vest in the assignee all of Founder's rights hereunder (including, but not limited to, all of the Founder's easements, rights of consent or approval and voting rights) on the same terms that they were held by Founder in accordance with this Community Operating Agreement.

20.2.2 An assignment by recorded instrument of part of the Founder's rights shall vest in the assignee the specific Founder's right(s) named in the instrument of assignment on the same terms that they were held by the Founder in accordance with this Community Operating Agreement.

20.2.3 An assignment of all or any portion of the Founder's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Community Operating Agreement if the assignor had retained all of the Founder's rights under this Community Operating Agreement.

20.3 Captions and Exhibits: Construction. Captions given to various Sections in this Community Operating Agreement are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof of the document. Any exhibits referred to in this Community Operating Agreement are incorporated as though fully set forth where the reference is made. The provisions of this Community Operating Agreement shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property.

20.4 Severability. If any provision of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, or any section, clause,

sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Community Operating Agreement, the Rules and Regulations, or the Community Development Standards shall be construed as if the invalid part were never included in the relevant document.

20.5 Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Community Operating Agreement is unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living descendants of Joseph P. Kennedy.

20.6 Mortgage of Parcels. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Parcel. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part of the Property, except only to the extent of his Parcel.

20.7 Power of Attorney. Unless otherwise specifically restricted by the provisions of this Community Operating Agreement, in any instance in which the Founder is empowered to take any action or do any act, including; but not limited to, action or acts in connection with the Neighborhood Community Areas or sale of Neighborhood Community Areas, which may at any time be deemed to require the act of an Owner, the Owners and each of them by the provisions of this Community Operating Agreement constitute and appoint the Founder as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or by the acceptance of a deed for a Parcel or by signing a contract for purchase of a Parcel or by succeeding in any other manner to the ownership of a Parcel, or any interest therein, each Owner and other Person shall be deemed and construed to have ratified and expressly granted the above power of attorney.

20.8 Gender. Masculine, feminine and neuter references in this Community Operating Agreement each shall include the others as the context requires.

20.9 New Mexico Law. This Community Operating Agreement, the Rules and Regulations, and the Community Development Standards shall be subject to, and construed in accordance with, New Mexico law.

SECTION 21 - RIGHTS AND OBLIGATIONS

Each grantee of the Founder, and each Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for such a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring any other interest in the Property, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by this Community Operating Agreement. All rights, benefits and privileges of every character hereby granted, created, reserved or declared by this Community Operating Agreement, and all impositions and obligations imposed by this Community Operating Agreement shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in the land, and shall inure to the benefit of any such Person in like manner as though the provisions of this Community Operating Agreement were set forth in every deed of conveyance, purchase contract or instrument evidencing or creating the interest.

SECTION 22 - ZONING AND MASTER PLAN

Each Owner, by accepting title to a Parcel and becoming an Owner, acknowledges awareness that the Property is a part of a larger 12,800-acre conservation development Project proposed to include approximately 965 homes and approximately 190,000 square feet of commercial, recreational, and civic land uses known as the “Galisteo Basin Preserve,” the development of which is likely to extend over many years, and agrees, so long as he is the Owner, not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Galisteo Basin Preserve or (b) changes in any master plan or plat for the Galisteo Basin Preserve, provided, in either case, the zoning, use, density, or master plan or plat revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like). Notwithstanding anything to the contrary in this Section, the provisions of this Section shall be enforceable only to the extent not in violation of any applicable provision of law.

[Signature on following page]

IN WITNESS WHEREOF, Founder has caused this Community Operating Agreement to be duly executed as of the date first written above.

COMMONWEAL CONSERVANCY INC.,
a New Mexico nonprofit corporation

By: _____

Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 200____, by _____, who is personally known to me or who presented _____ for identification.

My Commission Expires:

Name: _____

Notary Public

(SEAL)

Exhibit A

Southern Crescent

The Southern Crescent shall include the real property described on that certain plat entitled "LOT LINE ADJUSTMENT, EASEMENT VACATION AND RELOCATION PLAT PREPARED FOR THE OWNERS OF THE THORNTON RANCH SHOWING BOUNDARY ADJUSTMENTS WITHIN SEC. 1,11,12,13,14, 23, and 24, T14N R9E; SEC. 6, 7 and 18, T14N R10E; NMPM, SANTA FE COUNTY, N.M." filed for record November 28, 2006 in Plat Book 641, Pages 005-006, as Document No. 1460777, records of Santa Fe, New Mexico.

Exhibit B

The Property

The Property shall include Lots 1 through 22 of the real property described on that certain plat entitled "LOT LINE ADJUSTMENT, EASEMENT VACATION AND RELOCATION PLAT PREPARED FOR THE OWNERS OF THE THORNTON RANCH SHOWING BOUNDARY ADJUSTMENTS WITHIN SEC. 1,11,12,13,14, 23, and 24, T14N R9E; SEC. 6, 7 and 18, T14N R10E; NMPM, SANTA FE COUNTY, N.M." filed for record November 28, 2006 in Plat Book 641, Pages 005-006, as Document No. 1460777, records of Santa Fe, New Mexico.

Exhibit C
Water Use Standards

| Lot Number | Annual Water Allocation |
|------------|-------------------------|
| Lot 1 | 0.25 acre ft |
| Lot 2 | 0.25 acre ft |
| Lot 3 | 0.25 acre ft |
| Lot 4 | 0.25 acre ft |
| Lot 5 | 0.25 acre ft |
| Lot 6 | 0.25 acre ft |
| Lot 7 | 0.25 acre ft |
| Lot 8 | 0.25 acre ft |
| Lot 9 | 0.25 acre ft |
| Lot 10 | 0.25 acre ft |
| Lot 11 | 0.25 acre ft |
| Lot 12 | 0.25 acre ft |
| Lot 13 | 0.25 acre ft |
| Lot 14 | 0.25 acre ft |
| Lot 15 | 0.25 acre ft |
| Lot 16 | 0.25 acre ft |
| Lot 17 | 0.25 acre ft |
| Lot 18 | 0.25 acre ft |
| Lot 19 | 0.25 acre ft |
| Lot 20 | 0.25 acre ft |
| Lot 21 | 0.25 acre ft |
| Lot 22 | 0.25 acre ft |

V4289812.4