

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS**

for “Capitan Trading Post, Unit 1 and 2”

**within the N/2 of Section 10, Township 9 South, Range 14 East, N.M.P.M., Village of Capitan,
Lincoln County, NM**

RECITALS AND PREAMBLE

KNOW ALL MEN BY THESE PRESENTS:

This Declaration is made on the date hereinafter set forth by Conquest Investments, LLC, hereinafter referred to as the "**Developer**".

WITNESSETH:

WHEREAS the Developer is the owner of the platted development within the N/2 of Section 10, Township 9 South, Range 14 East, N.M.P.M., Village of Capitan, Lincoln County, NM called “Capitan Trading Post, Unit 1 and 2” hereinafter referred to as the “Property”.

WHEREAS, it is the desire of the Developer to place certain restrictions, easements, covenants, conditions, stipulations, and reservations (herein sometimes referred to as the "**Restrictions**"), upon and against such Property in order to establish a uniform plan for the development, improvement, and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future Lot owners of this Property.

WHEREAS, there is the potential for Developer to designate specific areas within the platted commercial subdivision beyond those areas that become accepted for ownership by the Village of Capitan for uses for open space, walkways or paths, drainage areas, landscape islands within cul-de-sacs, trails, landscaped parcels, that are to be owned and/or maintained for the benefit of all Owners, and such areas are hereinafter described as “General Common Properties”. Furthermore, there exists the potential for Developer to designate specific areas for the benefit for certain Owners and Users, entitling them to use the same, and such areas and facilities are hereinafter designated as “Special Common Properties”

WHEREAS, Developer intends for the individual Lots (as hereinafter defined) to be subject to specific rights, privileges, and easements for the benefit of the Developer, and/or other Owners and Users. Such rights, privileges, and easements being signage, landscaping, drainage, pedestrian or access easements over and across lots for the purpose of permitting the installation and maintenance of signs, landscaping and drainage facilities, parking, or permitting passage and accommodation of pedestrians and automobiles respectively. All shall be referred to hereinafter as “Easements” specific to the type of encroachment or easement in each case.

NOW, THEREFORE, Developer hereby adopts, establishes, and imposes upon the Property the following reservations, easements, restrictions, covenants, and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability, and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, as hereinafter defined.

ARTICLE 1. **DEFINITIONS**

Section 1.01 **The Building Review Committee (BRC)**. The BRC shall initially mean and refer to the Developer, and later, at a time of the Developer's choosing, a Committee created by the Developer for the purpose of construction approval and Declaration oversight, with regard to maintaining the integrity of the Property, subject to the provisions hereinafter provided;

Section 1.02. **Contractor**. Contractor shall mean any person or entity which contracts or undertakes to construct a Commercial Building or other improvements on a Lot or to make renovations to improvements on a Lot;

Section 1.03. **The Control Period**. The period of time during which the Developer shall act as the Building Review Committee, and is in total control of the interpretation, clarification, or modification of the Declaratory Articles set forth herein. The Developer, at any time, may, but shall not be obligated to, appoint a Building Review Committee and relinquish the Developer's rights under this Declaration by a recorded written instrument filed in the real Property Records of Lincoln County, NM;

Section 1.04. **Design Guidelines**. The written requirements for construction, improvements, and maintenance of improvements on the Tracts;

Section 1.05. **Declarant**. Shall mean Developer, Conquest Investments, LLC and successors in interest and assigns to the extent of any assignment in accordance with Article 4 hereof; "Declarants" shall refer to all of the aforementioned entities, which entities presently hold the entire fee simple estates of the property. Unless specified to the contrary hereunder, any action of the Declarants as Declarants under this Declaration, as defined below, shall be by majority vote.

Section 1.06. **Declaration**. This Declaration of Covenants, Conditions, Restrictions, and Easements for the Property as defined below. The Declaration is the entire body of this document and shall include any Amended Declaration (as herein defined) and Supplementary Declaration (as herein defined), to the extent applicable. "Amended Declaration" shall mean any Amended Declaration of Covenants, Conditions, Restrictions, and Easements which may be recorded pursuant to Section 9.02 hereof, which contains amendments or modifications of this Declaration. "Supplementary Declaration" shall mean any Supplementary Declaration of Covenants, Conditions, Restrictions, and Easements which may be executed by the Developer as Declarant and thereupon recorded, such right being herein retained by Declarants and Developer, which subjects additional real property to this Declaration in accordance with Article 9 hereof ;

Section 1.07. **The Design Standards** shall mean the standards and regulations of the Building Review Committee which shall be adopted from time to time pursuant Article 7 hereof;

Section 1.08. **The Developer**. The Developer shall mean and refer to Conquest Investments, LLC, or any successor, successor in title, or assignee who takes title to any portion of the property for the purpose of development and/or sale and who is designated as the Developer in a recorded instrument executed by the immediately preceding Developer, provided, however, there shall be only one person or entity entitled to exercise the rights and powers of the Developer at any one time;

Section 1.09. **Enclosed Structure**. An enclosed structure shall mean any structure with a minimum of four walls and a roof meeting all of the design guideline standards in Article 7;

Section 1.10. **General Common Properties** shall mean and refer to all land, improvements, and other properties owned or in possession of Declarant(s), Developer, or an Owner that is either dedicated to the Village of Capitan, or a public or quasi-public authority, and which are designated by Developer as General Common Properties, including, but not limited to, Landscape Easements, Signage Easements, Storm Drainage Easements, Pedestrian Easements, Parking and Roadway Easements in the Project (as hereinafter

defined) Developer and Declarants shall have the right to designate which lands, improvements, and other properties are General Common Properties in a document duly recorded in the office of the County Clerk of Lincoln County, NM. Section 1.11. **Improvements** shall mean and include, but not be limited to, buildings, driveways, exterior lighting, fences, landscaping, lawns, loading areas, parking areas, retaining walls, poles, roads, screening walls, signs, utilities, walkways, bikeways, perimeter berms, structures of any type or kind, or any other change in property from its natural state;

Section 1.12. **Mortgage.** A mortgage, deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any property;

Section 1.13. **Landscape Easement** shall mean and refer to the specific rights, privileges, and easements which are established on individual lots by the Owners thereof subsequent to approval pursuant to Article 4 hereof by the recording of a Declaration of Easement in the records of Lincoln County, New Mexico. All such rights, privileges, and easements shall be for the benefit of Developer and Declarants. Such rights, privileges and easements shall be a non-exclusive easement over, across and under a portion of the Lot for the purpose of permitting the installation and maintenance of initial landscaping and replacements thereof, including, but not limited to, the sprinkler system serving the landscaping;

Section 1.14. **Lot** shall mean any contiguous plot of land, the size and dimensions of which shall be established by the legal description in the original conveyance or lease from any Declarants, to the first User or free Owner of said plot of land, other than Declarants. A Lot may also be established by Developer by an instrument in writing, executed, acknowledged by the Developer, which designates a plot of land as a Lot for purposes of these covenants. After establishment of a Lot the boundaries shall remain unchanged, unless revised pursuant to a recorded document executed by the Developer and the Owners thereof; provided, however, that if fee simple title to two (2) or more adjacent Lots, as defined hereinabove, are acquired by the same Owner, such commonly-owned Lots may, at the option of said Owner, be combined and treated as a single Lot for the purpose of this Declaration;

Section 1.15. **Owner.** The record owner, whether one or more person or entities, of fee simple title to any Lot which is a part of the Property, including (a) Contract Sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as a security for the performance of an obligation, (b) the Seller (except as otherwise provided herein), and (c) Builders;

Section 1.16. **Parking and Roadway Easements** shall mean and refer to the specific rights, privileges, and easements which are established on individual Lots by the Owners thereof subsequent to approval pursuant to Article 2 hereof by the recording of Declaration of Easement in the records of the Clerk of Lincoln County, New Mexico. If required by the Building Review Committee, with respect to an individual Lot, submittal of the Declaration of Easement to the Building Review Committee by the Owner shall be mandatory prior to the time of Site Plan by the Building Review Committee in accordance with the provisions of Section 4.05 hereof. All such rights, privileges, and easements shall be for the benefit of the Developer, the Declarants, and other Owners. Such rights, privileges, and easements shall be non-exclusive easements over and across the Lot for the purpose of permitting the passage and parking of motor vehicles and the passage and accommodation of pedestrians;

Section 1.17. **Pedestrian Easement** shall mean and refer to the specific rights, privileges, and easements which are established on individual Lots by the Owners thereof subsequent to approval pursuant to Article 4 hereof by the recording of Declaration of Easement in the records of the Clerk of Lincoln County, New Mexico. If required by the Building Review Committee, with respect to an individual Lot, a submittal of the Declaration of Easement to the Building Review Committee by the Owner shall be mandatory prior to the time of Site Plan approval by the Building Review Committee in accordance with the provisions of Article 4 hereof. All such rights, privileges and easements shall be for the benefit of the Developer, the Declarants, and all other Owners. Such rights, privileges and easements shall be a non-exclusive easement over and across the designated portions of the Lot for the purpose of permitting the passage and accommodation of

pedestrians;

Section 1.18. **Permittees** shall mean and refer to all tenants and occupants of Lots and employees, customers, visitors, invitees, licensees, and subtenants thereof (excluding Owners)

Section 1.19. **Plans and Specifications** shall mean and refer to the documents required to be submitted to the Building Review Committee, as further described in Article 4;

Section 1.20. **The Property** shall refer to and mean the entire 23.676 acres, excluding the land dedicated to the Village of Capitan for the Magado Creek Drainage Easement "A", as described in exhibit "A", which consists of the Plat as filed with the Plat Records of Lincoln County, New Mexico, and as amended. The Property acreage may be added to or taken from this Declaration during the Control Period by a recorded instrument filed by the Developer;

Section 1.21. **The Restrictions.** The Restrictions shall refer to and mean, collectively, all restrictions, easements, covenants, conditions, stipulations, and reservations contained in this document.

Section 1.22. **Signage Easement** shall mean and refer to the specific rights, privileges and easements which are established on individual Lots by the Owners thereof subsequent to approval pursuant to Article 4 hereof by the recording of the Declaration of Easements in the records of the Clerk of Lincoln County, New Mexico. If required by the Building Review Committee, with respect to an individual Lot, the Lot, the submittal of the Declaration of Easement to the Building Review Committee by the Owner shall be mandatory prior to the time of Site Plan approval by the Building Review Committee in accordance with the provisions of Article 4 hereof. All such rights, privileges, and easements shall be for the benefit of Developer and Declarants. Such rights, privileges, and easements shall be a non-exclusive easement over and across a portion of the Lot for the purpose of permitting the erection and maintenance of signs which advertise or give information regarding the Commercial Development.

Section 1.23. **Site Plan** shall mean and refer to the document required to be submitted to the Building Review Committee as further described in Article 4;

Section 1.24. **Storm Drainage Easement-** shall mean and refer to the specific rights, privileges and easements which are established on individual Lots by the Owners thereof subsequent to approval pursuant to Article IV hereof by the recording of a Declaration of Easement in the records of the Clerk and Recorder of Lincoln County, New Mexico. If required by the BRC, with respect to an individual Lot, the submittal of the Declaration of Easement to the BRC by the Owner shall be mandatory prior to the time of the Site Plan approval by the Building Review Committee in accordance with the provisions of Article IV hereof. All such rights, privileges, and easements shall be for the benefit of Declarants, Developer, and the Owners of certain portions of the Property, as more particularly described therein. Such rights, privileges and easements shall be a non-exclusive easement over and across a portion of the Lot for the purpose of permitting construction and maintenance of storm drainage facilities and structures and the passage and accommodation of storm.

Section 1.25. **Supplemental Declaration** shall mean and refer to any supplemental declaration of covenants, conditions, restrictions, and easements bringing additional property within the scheme of this Declaration under the authority provided herein. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declaration;

Section 1.26. **User** shall mean an Owner or ground lessee (lessee of the entirety of a Lot, whether vacant or improved) other than a Declarant unless a Declarant is itself a ground lessee or the Owner of improvements on a Lot other than as a result of reversion.

ARTICLE 2.

THE PLAT (EXHIBIT "A") AND CERTAIN EASEMENTS AND USE

Section 2.01. **Reservations of Certain Rights to Declarants and Developer in the General Common Properties.** The rights and easements of enjoyment created hereby with respect to the General Common Properties shall be subject to the following:

- a) The right of the Developer or a Declaration to dedicate or transfer all or any part of Common Properties to any public agency, authority, or utility company serving the Property, for such purposes and on such conditions as may be agreed to by Developer consistent with the intent of the Declaration.
- b) The right of Developer or Declarants to grant easements and/or rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper service and maintenance of the Property and Owners shall be obligated to grant such easements and/or rights-of-way upon the request of the BRC, as provided in Article IV, from time to time.
- c) The rights of Developer to grant temporary easements upon lots owned by Developer for storage of construction materials, dirt, and similar items to Owners or Users, or to Developer during the construction of Improvements upon any areas within the Property; provided, however, that following the completion of such from these Lots and restore the same to their condition existing immediately prior to their use therefore, or to a condition acceptable to the BRC, all at the sole cost and expense of said Owner or Developer, and restoration within sixty (60) days of completion of such construction. Developer may, after such completion of construction, after giving such grantee ten (10) days' prior written notice (unless within said ten (10) day period such grantee shall proceed and thereafter pursue with diligence such removal and restoration), undertake and complete the removal of all materials and dirt from the Lot(s) and restore the same to their condition existing immediately prior to their use therefore or to a condition acceptable to the Building Review Committee. If Developer undertakes and completes such removal and restoration because of the failure of the grantee to complete the same, the cost of such removal and restoration shall be assessed against the grantee; and if such assessment is not paid within thirty (30) days after written notice of such assessment from Developer to said grantee, it shall constitute a lien on the Lot for whose benefit the easement was granted and may be enforced as set forth in Article VII hereof.

Section 2.02. **The Recorded Plat.** The Subject Property is a platted subdivision, and a Plat of this Property is recorded in the office of the County Clerk and Ex-officio Recorder of Lincoln County on _____, ____, 20__ in Cabinet ____, Slide No. _____. This Plat dedicates for use, subject to the limitations set forth herein, certain easements and other matters shown on the Plat. This Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions, reservations, and easements created herein or shown on the Plat, re-plats, or amendments of this Plat shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of the Developer, conveying said Property or any part thereof whether specifically referred to therein or not. Any re-plats or amendments shall be filed in the Real Property Records of Lincoln County, New Mexico.

Section 2.03. **Utility Easements.** Easements for the purpose of installing, maintaining, replacing, and repairing, or conveying to proper parties so that they might install, maintain, replace, and repair electric power, gas, water, sewer, telephone, television cable, high speed internet cable, drainage, and/or other any other similar utility lines, facilities, and services for the Lots have been reserved as shown on the Plat and/or as provided by instruments of record or to be recorded. Within these easements, if any, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of such utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. Neither the Developer, the BRC, nor any utility company using easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to roads, shrubbery, grass, flowers, trees, landscaping, or any other property

of the Owner's situated on land covered by said easements, except as may be required by State, County, or Municipal statutes, ordinances, rules, or regulations, or by the BRC, or by custom and practice of such utility company. The easements reserved and dedicated hereby shall be for the general benefit of the Property and shall be used by the respective utility companies as conservatively as possible with regard to the destruction and/or damage possible to trees, shrubs, grasses, and other habitat. Insofar as is possible, the companies using these easements shall coordinate with the BRC and the Lot Owner in determining the exact location of the utility lines and facilities. The easements shall inure to the benefit of, and may be used by, any public or private utility or cable company entering onto the Property for such purposes, without the necessity of any further grant of such easement rights to such utility companies.

A ten (10) foot wide public utility easement is hereby reserved along all front lot lines adjacent to Subdivision Roads. There is hereby reserved a seven and a half (7.5) foot wide public utility easement on all side lots lines (for a total of 15 feet) and fifteen (15) foot wide public utility easements at the rear perimeter of all lot lines adjacent to creeks. Any and all additional public utility easements as shown in the Recorded Plat of this Property shall be subject to the Covenants, Conditions, and Restrictions set forth herein

Section 2.04 **Landscape Easements.** Subject to the provisions hereinafter set forth in this Article, Developer shall have the right and easement to landscape certain portions of an individual lots as established within the Plat for the Subdivision in accordance with the Design Guidelines within Article 7 by the recording of a Declaration of Easement in the office of the Clerk and Recorder of Lincoln County, New Mexico. The Village shall be designated as grantee in the Declaration of Easement to be granted by an Owner with respect to the Landscape Easements to be located on its Lot. Such easements shall be for the benefit of Developer for the purpose of installing and maintaining (including repair and replacement) certain initial landscape improvements thereon. After completion of the Developer's one (1) year warranty period for the infrastructure, the maintenance, replacement, and watering of such landscaping becomes the responsibility of the Village of Capitán. Notwithstanding anything contained herein to the contrary, the Owner of any Lot retains legal title to the real property encumbered by the Landscape Easement.

Section 2.05. **Certain Other Easements.** There is hereby created in favor of the easement owners, the Developer, the BRC, and their assignees, a right of ingress or egress across, over, and under the Property for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, natural gas, television and internet cable, subdivision signage, and appurtenances thereto, and for inspection and enforcement of the Restrictions contained herein.

Section 2.06. **Implied Drainage Easements.** The Owners of any Lot in the Property shall not perform or cause to be performed any act which would alter or change the course of drainage in a manner that would divert, increase, accelerate, impede, or contaminate the natural flow of water over and across the Property without the Developer's or the BRC's written consent.

Section 2.07. **Use of Easements and Damages.** Neither the Developer nor the BRC nor any individual member of the BRC shall be liable for any damage done by any utility company or their assigns, agents, employees, or servants, using any easements now or hereafter now in existence whether located on, in, under, or through the Property, to fences, shrubs, trees, flowers, or any other improvements now or hereinafter situated on, in, under, or through the Property. No provision hereof related to placement or nature of structures or conditions on a Lot, nor the approval thereof, express or implied, by the Developer or BRC shall affect the rights of easement owners nor enlarge the rights of Lot owners with regard to the construction and maintenance of improvements or conditions within an easement area.

ARTICLE 3. **USE RESTRICTIONS**

Section 3.01. **Permitted Uses and Performance Standards.** No noxious or offensive trades, services or activities shall be conducted on any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the Owner, User, tenant or occupant of other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. Lots shall be utilized only for engineering, research facilities, laboratories, light to medium industrial uses, offices, warehousing and such other uses as Developer shall permit in its sole discretion, consistent with applicable zoning codes and regulations applicable to the Property (including the Development Plan and this Declaration) from time to time.

Section 3.02. **Commercial Use.** The intent for this Development is for Commercial Use only. Commercial property, as it is intended for this instrument, includes office buildings, places of worship, schools, parking, supermarkets, senior care facilities, public swimming or exercise facilities, restaurants, industrial property, medical centers, hotels, malls, retail stores, shopping centers, farm land, warehouses, storage units, and garages. Furthermore, hotel, as per the EPA definition, applies to buildings that rent overnight accommodations on a room/suite basis, typically including a bath/shower and other facilities in guest rooms. Hotel properties typically have daily services available to guests including housekeeping/laundry and a front desk/concierge. The total gross floor area should include all interior space, including guestrooms, halls, lobbies, atria, food preparation and restaurant space, conference and banquet space, health clubs/spas, indoor pool areas, and laundry facilities, as well as all space used for supporting functions such as elevator shafts, stairways, mechanical rooms, storage areas, employee break rooms, back-of-house offices, etc. Hotel *does not apply* to properties where more than 50% of the floor area is occupied by fractional ownership units such as condominiums or vacation timeshares. Hotel properties should be majority-owned by a single entity and have rooms available on a nightly basis. The use of the Lots within this particular Development shall not be permitted to be utilized for Single Family Residential use. Multifamily Residential Use shall not be permitted within this Development. For the purpose of this instrument, Multifamily Residential Use shall apply to a residential building equal to or larger than 2 units that does not fall under the classification of a hotel as described in this Section. Multifamily space types include all square footage in the residential units, common areas, and unconditioned space (boiler room). Occupants of Multifamily housing can include tenants, cooperators, and/or individual owners.

Section 3.03. **Agricultural Use.** The Property may be used for the growing of agricultural crops, including: timber, nuts, fruits, vegetables, grains, hay, forage crops, etc. Timber may be harvested from each Lot at the discretion of each Lot Owner, providing that all appropriate governing body regulations (e.g. Federal, State, County, Municipal, etc.) with regard to timber harvesting are obeyed and that Section 2.04 (Implied Drainage Easements) is complied with, soil erosion hazards are minimized, and all soil rutting is ameliorated to a smooth surface. Any cultural practices deemed necessary for the growing of timber, nuts, fruits, vegetables, grains, hay, and forage crops shall be acceptable, providing that all appropriate governing body regulations are followed, and that Section 2.06 (Implied Drainage Easements) is complied with. A change of land use (e.g. from timber to vegetable crops or pasture) is acceptable, as long as Section 2.06 (Implied Drainage Easements) is complied with.

Section 3.04. **Sale of Agricultural Products.** The retail sale of agricultural products from the Property itself is allowed (e.g. fruit stands, vegetable stands, sales from the bed of a pick-up truck, etc.). Livestock, timber, and hay sales are permissible from the Property as long as all restrictions within this instrument are adhered to, including, but not limited to fencing requirements, The Design Standards, state, federal and local regulations.

Section 3.05. **Livestock and Pets.** Except for use as part of a preapproved commercial activity, no animals, livestock, reptiles, or poultry of any kind shall be allowed to be kept on any Lot. In the event that such commercial use of livestock or pets is approved, each lot shall be allowed a maximum of two horses per acre. This does make the purchase of multiple lots necessary in order to house livestock of this nature. In

the event that such livestock are utilized for a period less than one day on the property, some pre-approved exception may be derived. A maximum of four small livestock per acre may be kept for commercial use instead of two horses. If a combination of horses and small livestock are desired, one horse and up to two small livestock are permissible. Up to three domestic dogs and three domestic cats may be kept on a Lot, provided they are kept, bred, or maintained for a business or commercial purpose. In addition, up to twenty small animals (rabbits, turtles, doves, quail, and pigeons) may be kept, enclosed in a pens or hutches, on each Lot for a pre-approved commercial purpose. All Lincoln County, or if applicable, Village if Capitan leash laws related to animals shall apply. In the event that the use of such lot is for a Veterinarian, grooming facility, pet daycare or Pet Store, so long as County, State and Federal Regulations are adhered to, exception to the above stipulations may be made by the BRC in advance of such use only.

The Owner(s) or care keeper of any pets or livestock shall maintain them, plus their facilities, in such a manner that no foul or obnoxious odors exist on their Tract. All animals or livestock shall be kept in such a manner so as not to disturb the peace, quiet, safety, comfort, or serenity of the surrounding Lot Owners. All livestock and other animals must be contained within the boundaries of the Lot Owner, by fencing or caging in an appropriate manner. Any pen, corral, hutch, structure, or enclosure of any kind must be constructed of new materials, be kept neat and clean in appearance, and meet the requirements of the Design Standards. No animals or livestock shall be allowed to roam free. If in the sole discretion of the BRC, any livestock or pet endangers the health, makes objectionable noise, creates an offensive smell, or constitutes a nuisance or inconvenience to surrounding Owners, then it shall be removed at the BRC's request.

ARTICLE 4.

THE BUILDING REVIEW COMMITTEE

Section 4.01. **Creation of the Building Review Committee.** There is hereby created a Building Review Committee (BRC), which shall be composed of 1-3 willing and able members selected by Developer. The Developer shall have the right to remove or add members to the BRC and fill vacancies in the BRC membership as it sees fit, until such time as Developer sees fit to relinquish this right. No public meetings, or notice of meetings, shall be required by the BRC. The BRC members shall not be entitled to compensation for their services rendered in such capacity. To obtain approval of the BRC regarding any matter coming before the BRC, the approval of a majority of the members of the BRC shall be required.

Section 4.02. **Continuance of the Building Review Committee.** The Developer, at any time of its choosing, can, by filing a recorded instrument in the Real Property Records of Lincoln County, relinquish control of the BRC to existing or newly appointed BRC members. This filing of relinquishment shall signify the end of the Control Period. The Developer, at the time of this relinquishment, shall retain or appoint 1-3 willing and able members to serve on the BRC, and may impose additional organizational and administrative guidelines, including, but not limited to, addition or removal of members, voter rights, appeals processes, etc., as deemed necessary by the Developer, for the orderly perpetuation of the BRC and its purpose. The BRC shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof.

Once the Control Period has ended, then a majority of the BRC may act for the BRC. No notice of BRC meetings shall be required. In the event that a vacancy shall arise on the BRC, the remaining member or members of the BRC shall fill such a vacancy by appointment, and if they fail to do so within 30 days, the Owners, by petition presented to the existing BRC members, and ratified by 60% of the Owners (1 Tract=1 Vote) can appoint a new BRC member. Failing this, then the Developer, if he so chooses, may appoint a new BRC member. If a BRC member or members is judged by the Property Owners to be incompetent or unduly arbitrary in the performance of their duties, than these BRC members can be removed by the same 60% vote of the Property Owners. Written notice of such a vote shall be given to all current BRC members.

If, after the Control Period has ended, the BRC becomes defunct or disbands, then 3 new BRC members can be reappointed by a 60% vote of the Property Owners (1 Lot = 1 vote). Failing this, then the Developer, if he so chooses, may appoint new BRC members. In no event shall the lack of BRC oversight constitute grounds for violation of any Restrictions herein defined, nor diminish the right of any individual or class of Property Owners from seeking injunctive relief against any Owner violating any of these Restrictions.

Section 4.03. **Purpose and Scope of the Building Review Committee.** The purpose of the BRC shall primarily be for the review of construction plans submitted by Owners of the Lots comprising the Property, to ensure compliance with the Design Guidelines Restrictions as set forth in Article 7 (below). Additional duties of the BRC may include, at the BRC's sole discretion, notification and the authority to take enforcement action against violators of any Restrictions contained in this document.

Section 4.04. **Approval of Plans.** No building, structure, fence, wall, pond, or drainage plans shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition or change or alteration therein be made, until two sets of detailed plans and specifications (the "Required Plans") have been submitted in writing to the BRC, and approved in writing by the BRC as to harmony of external design, color, and compliance with the Design Guidelines (Article 7).

Section 4.05. **Submission of Plans.** All "Required Plans" submitted to the BRC must be dated and receipted by a member of the BRC or a BRC designated recipient. Two sets of Required Plans and Specifications, all in such form as the BRC may reasonably require, shall be submitted to the BRC as follows:

- (a) A site plan with all pertinent references as to legal description, setback lines, and easements, means of ingress and egress, parking areas, compliance with ADA accessibility requirements, solid waste pick-up location, signs, landscape areas, traffic patterns, drives and driveways, walks and trails, screening.
- (b) Floor plans
- (c) Roof plans
- (d) Plans of all four elevations (front, rear, left side, and right side), depicting all stories
- (e) Plans and specifications which specify materials, structural detail, exterior elevations, and the nature, kind, shape, heights, exterior color scheme, and location of the proposed improvements or alterations thereto. This is pertinent to all structures, including fencing and out buildings, in addition to primary structures.
- (f) Landscape Plan showing compliance with minimum landscape and open space requirements set forth within Section 4.06.
- (g) The type, style, size and candle power of all outdoor lighting fixtures;
- (h) Drawings and design specifications for all proposed signs, including the colors thereof and the quality and materials to be used in the manner of illumination;
- (i) Proposed use of Building(s) and the Lot; and
- (j) All such other information as may be reasonably required which will enable the Building Review Committee to determine the location, scale, design, character, style and appearance of the Owner's intended improvements.

All of the foregoing Plans and Specifications above described shall conform to the applicable provisions of this Declaration and shall be submitted in writing over the signature of the Owner of the Lot or the Owner's authorized agent. The BRC shall have the power to employ professional consultants to assist with the evaluation of Required Plans, and may create and impose reasonable fee on applicant for the processing of applications and evaluation of Required Plans.

Section 4.06. **Landscape Plans.** All lots must have landscaping plans reviewed by the BRC. Landscape plans will be reviewed in order to verify that the vegetation that will be planted is acceptable based on the

climate and water availability. Additionally, such landscape plan will be reviewed in order to confirm that meets or exceeds the minimum native vegetation, minimum number of trees, and minimum landscape requirements set forth in Section 7.19 with the installation of such landscaping. Any project that may affect Section 2.06 (Implied Drainage Easements) must be submitted to BRC for approval before commencement of the project.

Section 4.07. **Time-Frame for Approval of Submitted Plans.** The BRC shall notify the Owner of approval or disapproval of Required Plans within 30 days after the Owner has submitted the Required Plans to the BRC with written notice that the Owner desires BRC approval. If the Required Plans and Specifications are not sufficiently complete or are otherwise inadequate, the BRC may reject them as being inadequate or may approve them in part, conditionally or unconditionally, and reject the balance. If, in the event that the Plans submitted by the Owner have not been approved or disapproved within 30 days after being submitted, then Plans so submitted will be deemed to have been approved, but a deemed approval shall not permit a violation of any terms of this Declaration nor extend to any deviation from or alteration to the Plans actually submitted, nor to any matter requiring a written variance.

Section 4.08. **BRC: Fact Finding, Interpretation of Covenants, and Liability.** The BRC shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any Restriction herein that may be vague, indefinite, uncertain, or capable of more than one interpretation. The goal of the BRC is to encourage construction of buildings of good architectural design, quality, and proper size compatible with the Developer's conceptual plan for the Property. Buildings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior, and the use of such materials, which in the sole judgment of the BRC, create an attractive and harmonious blend with existing and proposed buildings in the area and the natural surroundings. The BRC may disapprove the construction or design of a Commercial Building on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the market value and aesthetic appearance of the Property, or to preserve the serenity or natural appearance of the Property. No variance will be granted that is contradictory to existing ordinances of the Village of Capitan without prior approval from the governing body of the Village of Capitan. Members of the BRC and their representatives shall not be liable to any person subject to or possessing or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder. The BRC's evaluation of Required Plans is solely to determine compliance with the terms of this Declaration and the aesthetics of the proposed improvements and the BRC disclaims any responsibility to determine compliance with any applicable building code or other standard for construction.

Section 4.09. **Granting of Variances and Waivers.** The BRC shall have the right, but not the obligation, to grant variances and waivers relative to deviations from and infractions to the Declaration or to correct or avoid potential hardships to Owners. Upon written submission of a request for a waiver or variance, the BRC, may from time to time, in its sole discretion, permit an Owner to construct, erect, or install a Commercial Building which is in variance from the covenants, restrictions, or Design Guidelines which are provided in this Declaration. In any case, such variances must, in the BRC's sole discretion, blend effectively with the general architectural style and design of the Property, and must not detrimentally affect the integrity of the Property or neighboring properties or be incompatible with the natural surroundings. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance or waiver, and shall indicate with specificity the particular standard sought to be varied from, and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the BRC has not expressly and in writing approved such request within 30 days of the submission of the request. No member of the BRC shall be liable to any Owner for claims, causes of action, or damages arising out of the granting of any variance to any Owner on the Property. No individual member of the BRC shall have any personal liability to any Owner or any other person for the acts or omissions of the BRC, if such acts or omissions were committed in

good faith and without malice. Each request for a variance submitted hereunder shall be reviewed independently of similar requests and the grant of a variance to any one Owner shall not constitute a waiver of the BRC's right to deny a variance to another Owner. The decisions of the BRC with respect to variances shall be final and binding upon the applicant.

ARTICLE 5.

Maintenance and Assessment

Section 5.01. **Creation of Lien and Personal Obligations for Assessments.** Each Owner other than Declarants, by acceptance of a deed to his lot, whether or not it shall be so expressed therein, or by acceptance or any other conveyance thereof (except a conveyance in connection with the establishment of a Mortgage), and every User of such Lot shall be deemed to covenant and agree to pay to Developer: i. special assessments in connection with an Owner's failure to perform the required maintenance of his Lot, included, but not limited to upkeep of landscaping, structures, fencing, parking areas, and other Improvements located thereon, all as herein describe;. ii. Special assessments to pay for costs incurred by virtue of unforeseen emergencies, including, but not limited to unusual snow fall or heavy rainfall. All assessments herein provided for shall be assessed by the Developer. Special assessments shall be levied from time to time as and when determined by Developer. All assessments described herein along with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot and Improvement against which each such assessment is made, subject to foreclosure in accordance with applicable law, but any such lien shall be subordinate to any valid first Mortgage affecting such Lot. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the Owner and User of such Lot at the time the assessment falls due, and in the event that there is one Owner or User, such obligations shall be joint and several and shall commence on the date of delivery of a deed or ground lease from a Declarant to such Owner or User.

Section 5.02 **Special Assessments for Emergencies.** Developer may levy in any one year one or more special assessments, applicable to that year for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement, including land rehabilitation and restoration necessitated by any emergency.

Section 5.03 **Special Assessments for Exterior Maintenance.** In the event that any Owner or User shall fail to maintain his/her lot and/or Improvements situated thereon in a manner that is satisfactory to the BRC, Developer shall have the right, through its agents and employees to enter upon said Lot and to repair, maintain and restore the same and the exterior of the Buildings and any other Improvements, including, but not limited to outbuildings, fencing, required landscaping per Design Standards, parking lot, in a manner contemplated by the above provisions. The cost of such exterior maintenance shall thereupon be deemed to be a special assessment to which such lot and its Owner and User shall be subject as aforesaid. Notice shall be provided to Owner and/or User at a minimum of thirty (30) days prior to any action being taken by Developer, allowing for Owner or User to resolve such issue to cause the need for a Special Assessment for Exterior Maintenance.

Section 5.04 **Special Assessment Deposit and Effect of Non-Payment of Assessments and Personal Liability of Owner.** Special Assessment shall be due payable at the end of thirty (30) days after receipt of such special assessment statement. In the event that special assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall thereupon be deemed, together with such interest thereon and costs of collection thereof as hereinafter provided, a continuing lien upon the lot and all Improvements thereon, it shall be the personal obligation of each Owner and User to pay the assessment affecting his/her lot assessed during its ownership and such personal obligation shall continue even though the Owner's or User's interest in such property shall be transferred. The interest rate of five percent (5%)

above the prime rate of the Developer's bank, but in no event higher than what is allowable by law. Developer may bring legal action against the lot and the Improvements thereon and/or the Owner or User thereof to collect any unpaid assessment and there shall be added the amount of such assessment all costs incurred by Developer in foreclosing or attempting to foreclose the lien or in collecting or attempting to collect the amount owing, including reasonable attorneys' fees. The lien of the assessment aforesaid shall be subordinate to the lien of any bona fide security device, including lien of Mortgage, sale and leaseback now and hereafter placed upon the Lot subject to assessment; provided, however, such subordination shall apply only to the assessments which have become due and payable prior to a decree of foreclosure, or other proceeding in lieu of foreclosure. Such sale or transfer shall not release lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessments.

Section 5.05 **Property Not Subject to Assessment.** The following parts of the Property shall be exempt from assessments charges and liens created by this Declaration:

- a) All parts of the Property dedicated to and accepted by the Village of Capitan, Lincoln County, or any other public or quasi-public authority

ARTICLE 6. **Enforcement**

Section 6.01. **Enforcement, Liability. Injunctive Relief.** All decisions of the BRC shall be final and binding, and there shall be no revisions of any action of the BRC except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of improvements or threatened construction of improvements in violation of this Declaration, any Owner, the BRC, or the Developer may seek to enjoin such construction or seek other relief against the Owner or builder responsible, provided that such offending party shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of suit (Article 5). The BRC is *not* required to police or enforce compliance with such considerations as minimum size, setbacks, or other specific, objective construction requirements. Individual lot owners have the ability act on their own behalf, in the event that another lot Owner or Occupant violates this Declaration, to enforce this Declaration through the civil justice system.

Section 6.02. **Inspection.** Developer and the BRC may from time to time at any reasonable hour or hours, enter and inspect any property subject to these restrictions to ascertain compliance therein.

Section 6.03. **Responsibility for and Failure to Enforce Restrictions.** Neither the BRC, nor any individual member of the BRC shall be liable for damages, or otherwise, to anyone submitting plans and specifications for approval or to any Owner who believes himself adversely affected by this Declaration by reason of mistakes in judgment, negligence, or nonfeasance in connection with the approval or disapproval of Plans or requests for waivers or variance. If so desired, but not required by this instrument, the Village of Capitan may take the responsibility and therefore hold the right to enforce restrictions herein. This is at the discretion of the Village and is not a requirement.

Section 6.04. **Deemed to Constitute a Nuisance.** Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed thereof by law or equity against an Owner, User, Permittees shall be applicable against every such violation and may be exercised by Developer.

Section 6.05, **Liquidated Damages.** Notwithstanding any other provision of this Declaration to the contrary, upon violation of any provision of this Declaration or The Design Standards, which violation is of a kind and nature that damages resulting therefrom are not easily determinable or ascertainable, the Owner

who commits such violation or whose User or Permittees commits such violation and any User who commits such violation shall be liable for an amount equal to Five Hundred (\$500.00) as liquidated damages for each day during which such violation continues to incur. All damages incurred by this Association which are in the form of liquidated damages shall constitute a lien upon the Lot and the Improvements of such Owner or User and may be enforced as set forth in Article VII hereof, subordinate to any valid first Mortgages as provided therein.

ARTICLE 7.

DESIGN GUIDELINES

Section 7.01. **Foundations.** All building foundations shall consist of either: (a) a concrete slab or (b) piers and beams, with the entire building being skirted with material like in type to the outside of the Commercial Building. The Builder of each Commercial Building and building shall, to the extent possible, minimize the amount of exposed foundation below the bottom of the exterior wall line. No more than 18" of concrete slab shall be exposed to view from any street, and any such excess shall be concealed by an approved exterior wall covering. The BRC may approve a different type of foundation when circumstances such as topography of the Lot make it impractical to use one of the above foundations for all or any portion of the Commercial Building. Minimum finished slab elevation for all structures shall be above the 100-year flood plain elevation as established by the latest Federal Emergency Management Association (FEMA) publication, or by an elevational survey approved by a Registered Public Surveyor. All foundations shall be inspected by a certified building inspector licensed by the State of New Mexico for conformance with the Required Plan and the current IRC requirements.

Section 7.02. **Exterior Walls.** The exterior walls of the Commercial Building and accessory structures can be composed of brick, brick veneer, masonry, adobe, fiber cement siding (e.g. hardi-plank), various rock, wooden logs, or other materials approved by the BRC. Masonry shall be interpreted to include stucco, EFIS, ceramic tile, clay tile, brick, rock, and all other material commonly referred to in Lincoln County as masonry. Materials to be excluded by the BRC are: wooden siding (e.g. T1 11, plywood, oriented strand board, etc.), vinyl siding, and other materials deemed as aesthetically displeasing, structurally unsound, or of inferior quality. Engineered Pre-fabricated metal buildings (excluding corrugated tin) may be utilized if and only if the façade facing subdivision roadways and Highway 380 are comprised of or concealed with approved exterior wall surfacing expressed in the first two sentences of this section. Notwithstanding the requirements of this Section, the BRC is empowered to waive one or more requirements of this Section if, in the BRC's sole discretion, such a waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and in the opinion of the BRC, the resulting structure or appearance will not detract from the general appearance of the Property.

Section 7.03. **Roofing.** The surface of roofs on the Commercial Building and secondary structures (garages, gazebos, barns, shade structures, shops, etc.) shall be composed of: composition material (Excluding Asphalt or similar Shingles), slate, stone, concrete tile, clay tile, other tile of a ceramic nature, or metal (excluding corrugated tin). Wood, or wood shake roofs will be allowed if they meet minimum fire retardant criteria and are permitted by all governmental regulatory authorities having jurisdiction over the Property. Composition roofs must have at least a 20-year manufacturer's warranty. The BRC shall have the authority to approve other roof treatments and materials which, in the BRC's sole opinion, will be harmonious with other Commercial Buildings on the Property.

Section 7.04. **Paint and Stain.** The exterior colors of all improvements on a Lot, including any repainting of improvements, shall be subject to approval of the BRC.

Section 7.05 **Building Inspections.** During construction, each Commercial Building is required to have building inspections per the State of New Mexico Building Code, as well as county and village of Capitan

regulations.

Section 7.06. **Outbuildings.** All other outbuildings, including gazebos, pool houses, green houses, barns, workshops, garages etc., shall be constructed with new materials, be kept in good repair, and are subject to approval by the BRC before construction begins. All outbuildings constructed with wood or wood products must have the exterior surfaces painted or stained to inhibit decay, or else any exterior wood surface shall be constructed with treated wood or wood products. All other outbuildings shall be well maintained; no exterior surfaces shall exhibit rust, fungal, calcium, lime, or other deposits which shall detract from the aesthetics of the Property. On lots less than 2 acres in size, no detached garage or other outbuildings shall be located on any Lot forward of the rear exterior wall of the Commercial Building thereon.

Section 7.07. **Building Setback Lines.** No building or permanent structure of any kind is permitted on any type of easement. The setbacks shall be 20 feet from the front and rear lot lines and 10 feet on the all side lot lines. All boundaries along a subdivision road are considered to be a “front” lot line.

Section 7.08. **Utility Connections.** All Utility connections, including, but not limited to all water, gas, sewer, electrical and telephone connections and installations of wires to Buildings shall be made underground from the nearest available source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole, nor hung on the outside of any building, but the same shall be placed on or below surface of the property with adequate screening and fencing and all such installations are subject to prior written approval from BRC. Connection to existing power poles shall be made underground and no further poles shall be set for the purposes of power source to an individual lot. The Developer may choose to relocate or add poles to existing primary supply in the effort of extending primary power throughout the subdivision. The BRC shall have the right to require any Owner to grant on any Lot easements for utilities within the setback of any Lot to other Owners of Lots or to such utility companies or public agencies or authorities as it shall deem necessary for the proper utility service maintenance of the property. Septic systems and individual domestic wells are not permitted within any lot of this commercial subdivision.

Section 7.09. **Temporary Structures.** No structure of a temporary nature (sales structure, trailer, tent, shack, or other temporary office or building) shall be used a Commercial Building either temporarily or permanently. Neither prefabricated structures, nor building previously constructed elsewhere may be used as a Commercial Building for neither temporary, nor permanent use. Temporary structures may exist for only a short period of time during specific events (i.e. festivals, fairs, open houses) that have been pre-approved by the BRC.

Section 7.10. **Fencing.** All fences shall be constructed of new materials and shall be kept in good repair. No tin or sheet metal fences shall be allowed. Fencing materials shall consist of pipe, rock, brick, picket, decorative iron or other BRC preapproved material. All perimeter fencing shall be constructed of uniform materials and pattern. The front fencing face may be constructed of more decorative materials if so desired. Any fence forward of the front exterior wall of the Commercial Building shall be at least partially transparent in nature, allowing for a clear view of the Commercial Building from the Lot front. The maximum fence height shall be 6 feet. Each owner shall maintain all fencing placed on his/her Lot in a neat appearing and useable condition. Any fencing tilted more than 10 degrees from vertical shall repaired or replaced.

Section 7.11. **Driveways and Culverts.** All driveways shall be kept travelable year round, relatively smooth, and free from rutting, soft spots, and standing water, in order to allow easement owners, the BRC and its assigns, and emergency service vehicles uninterrupted access to provide services. All driveways shall be constructed with gravel, crushed concrete, concrete, or asphalt, at the Owner’s choosing and expense. If asphalt is chosen, then it must be of sufficient thickness, with appropriate compacted base, to withstand any heavier hauling (i.e. timber, agricultural products) that the Owner may choose to do. All culverts fronting Highway 380 shall be adhere to Village of Capitan Ordinances or the most current Lincoln County Ordinance as to placement, diameter, length, type, and covering. All other culverts shall be of sufficient size

and length so as not to impede natural drainage patterns. All driveways crossing over the high pressure gas line as shown on the recorded plat must be approved for construction by the BRC and the natural gas authority.

Section 7.12. **Antennas and Satellite Dishes.** No electronic antenna or device for receiving or transmitting any signal other than an antenna from receiving normal television, citizens band signals, cellular phone, or radio signals for the Commercial Building on that particular Lot shall be allowed. No antennas taller than 35 feet shall be allowed. All antenna specifications, locations, and installations shall be subject to BRC approval. All antennas shall be located behind the rear exterior wall of the Commercial Building, and as inconspicuously as possible.

No satellite dish may be maintained on any portion of any Lot outside of the building setback lines established for that Lot. A satellite dish may not exceed one meter in diameter, and must be mounted as inconspicuously as possible. However, in no event may the top of the satellite dish be more than two (2') feet above the roofline for roof mounted antennas or receivers. All dishes shall be one solid color of black or earth tones of brown, gray, or tan. No multicolored dishes shall be permitted. Not more than two (2) satellite dishes shall be permitted on each Lot. No transmitting device of any type, which would cause electrical or electronic interference in the neighborhood, shall be permitted. No satellite dish shall be installed for any commercial purpose whatsoever. All satellite dishes and antennal are subject to BRC approval and must comply with all applicable governmental regulations (e.g. FCA, county, state, etc.).

Section 7.13. **Solar Panels.** All solar panels installed shall be framed in such a manner so the structure members are not visible. The framing material shall be one that is in harmony with the rest of the structure. Solar panels shall not be installed in a location visible from any public road, and not within the building setback lines for that Tract unless integrated into the structure in a uniform manner designed as such. Solar panel installation is subject to BRC pre-approval; the BRC reserves the right to seek removal of any solar panel installed without prior BRC approval.

Section 7.14. **Wind Generators.** Any and all wind generator installation is subject to BRC pre-approval; the BRC reserves the right to seek removal of any solar panel installed without prior BRC approval.

Section 7.15. **Storage of Construction Materials.** Reasonable amounts of visible construction materials may be stored upon a Lot by the owner thereof for reasonable periods of time during the construction of improvements. Reasonable periods of time shall be six months or less for the Commercial Building and garage, and three months or less for any other structures (e.g. storage buildings, greenhouses, barns, etc.). The only exception is the storage of construction materials for sale as part of the normal course of business for the commercial entity. Such storage shall be located within enclosed storage facilities meeting the design guidelines, or behind a pre-approved screen wall or the rear of a commercial building.

Section 7.16. **Excavation.** The digging or removal of topsoil, gravel, or subsoil from any Lot is expressly prohibited, except as may be necessary in conjunction with the landscaping, building construction, or pond creation for that Subject Lot, all subject to prior approval by the BRC. The sale or commercial use of topsoil, gravel, or subsoil from any Lot is prohibited.

Section 7.17. **Signs.** All signs, advertisement, billboard, or advertising structure of any kind may be erected or maintained must be approved with prior written consent of the BRC and must meet the design requirements set herein, except: (a) one professionally made sign not more than 4' wide and 4' high advertising the Owner's Lot and/or Commercial Building Space for sale or rent, (b) one sign not more than 4' wide and 4' high advertising the Builder of the Owner's Commercial Building during the construction of the building, not to exceed 12 months, and (c) one sign not more than 4' wide and 4' high advertising livestock or agricultural products for sale, subject to the restrictions in Section 3.04. All signs shall be comprised of appropriate materials, with colors and building materials that are consistent with the exterior building materials of Owners' commercial building per section 7.02. Sign height shall be restricted to 8'. Sign Lighting shall be of a type that is not offensive to the night's sky and shall not interfere with sight of

operators of motor vehicles. Location, style, lighting and finishes of sign shall be submitted to BRC for approval prior to installation. Lighting for sign must be of a type that does not cause light pollution and is directed specifically at the sign. BRC shall have the right to remove any other sign, advertisement, billboard, or structure placed upon any Lot in violation of these restrictions, and in doing so shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 7.18. **General Maintenance of Structures.** All structures, at the Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful, and sanitary condition. All parkways, driveways, and walkways shall be kept in good repair. All exterior surfaces of all structures shall be kept in a good repair with respect to painting, prevention of wood decay, elimination of visible exterior mold, fungus, etc., general structural soundness, and general appearance. In the event that any structure on any Lot should fall into disrepair and become in need of paint, repair, or restoration of any nature and become unattractive and not in keeping with the Property, then the BRC shall have the right to give such Owner written notice of such conditions. If, within 30 days of receiving written notice, the Owner fails to begin and continue a diligent effort to correct such conditions, the BRC, in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may, at its sole discretion, enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct such conditions. The Owner thereof shall be billed according to the special assessment procedure outlined in Article 5.

Section 7.19. **Minimum Landscape and Landscape Maintenance Requirements.** At the responsibility of Lot Owners and Tenants, each lot within Subdivision shall consist at a minimum of 10% natural or be planted with native vegetation and maintained in a manner that does not include noxious weeds and is manicured as to prevent overgrowth. A minimum of 10% of each Lot shall be comprised of landscaping that has been approved as part of the landscape plan submitted to the BRC per Section 4.06. Each lot shall have a minimum of 3 trees per half acre planted within the area between the ROW and the 20' setback. The intent of this is to create an aesthetically pleasing entrance to each lot. It is recommended that native trees that are water conscientious be utilized. For areas on a Lot converted to open yards, grass and weeds shall be kept mowed so height from the ground level up does not exceed 8 inches. Dead or damaged trees which might create a hazard to the Property or persons within the Property shall promptly be removed or repaired, and if not removed upon request by the BRC within 30 days, the BRC may remove or cause to be removed such trees at the Owner's expense, plus 10%. The Developer or BRC shall not be liable for damages caused by such removal.

Section 7.20. **Completion of Construction. Occupancy, Use.** No Commercial Building shall remain incomplete for more than nine months after construction has commenced. No storage shed, greenhouse, or other structure not listed shall remain incomplete for more than six (6) months after construction has commenced. Perimeter fencing on any side of a Lot must be completed within six (6) months after construction has commenced.

Section 7.21. **Stormwater and Domestic Water Management.** The Terrain Management Plan for the Subdivision, filed in conjunction with the final plat, shall guide the treatment and restrictions in conjunction with Stormwater Management. In addition, all local, state and federal laws relative to the storage, runoff and apply. In an effort to reduce the use of domestic water, low flow fixtures, where possible shall be utilized in Commercial Buildings. The BRC maintains the ability to deem whether or not this effort is satisfied during their review of the plans and specifications for individual lot improvements.

ARTICLE 8.

USE RESTRICTIONS AGAINST HAZARDOUS, OFFENSIVE, NUISCANCE, UNSIGHTLY, UNSANITARY, OR ENVIRONMENTALLY UNSOUND ACTIONS OR CONDITIONS.

Section 8.01. **Hazardous Substances.** No “Hazardous Substance” shall be brought onto, installed, used, stored, treated, buried, disposed, or transported on or over any Lot on the Property, with the exception of insecticides, herbicides, fungicides, and fertilizers to be used on the individual Lots themselves, for agricultural production or landscaping. Chemicals and medicines used for the treatment of livestock to be raised on the Tracts themselves shall also be allowed. The term “Hazardous Substance” shall mean any substance which, as of the date hereof, or from any time hereinafter, shall be listed as “hazardous” or “toxic” under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act” (“CERCLA”), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act (“RCRA”) 42 U.S.C. Section 9601 et seq., or listed as such in any applicable state or local law or which has been determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term “Applicable Law” shall include, but not be limited to, CERCA, RCRA, the Federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., and any other local, state, and/or federal laws that govern the existence, cleanup, and/or remedy of contamination on the Property, the protection of the environment from any spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials. Those “Hazardous Substances” allowed above shall be purchased, transported, stored, applied, and disposed of in accordance with all federal, state, and local laws governing their use. It is the sole responsibility of the Owner and any Contractors that the Owner may hire for the application of these “Hazardous Substances” to be versed in their legal use, and to ensure that all applicable laws are obeyed regarding “Hazardous Substances”.

Section 8.02. **Parking of Motorized Vehicles.** All motorized vehicles must be parked, either: (a) in a designated parking area if operable or (b) in a garage, carport, or behind the rear exterior wall of the Commercial Building if not operable or to be stationary for an extended period. Extended period is defined as more than 72 hours in a 30 day period. No vehicles of any type may be parked within Highway ROW, nor along any subdivision street or adjoining street. Unless approved by the BRC, no boat, boat trailer, boat rigging, trailer, bus, motor home, horse trailer, livestock trailer, recreational vehicle or camper shall be parked or kept on any Lot unless such a vehicle is stored within a garage or carport or behind the rear exterior wall of the commercial building. However, boats, boat trailers, boat riggings, trailers, buses, motor homes, horse trailers, livestock trailers, recreational vehicles or campers may be parked in the Lot driveways for a period not exceeding 72 hours in any 30 day period.

Section 8.03. **Off Road Vehicles.** The operation of off-road vehicles (e.g. four-wheelers, dirt bikes, etc.) shall not be allowed, unless being operated in the normal course of a mechanic’s business or similar BRC approved application., between the hours of 8 am to 9 pm., providing noise levels are not excessive, and rutting from these vehicles does not cause erosion problems. All off road vehicles shall be stored in an enclosed area and not be visible from an adjacent Owners Commercial Building. Off Road Vehicles are not to be operated on Subdivision roadways, Trails, Sidewalks, , nor undeveloped land, other than by the Developers or employees thereof, or other persons with permission of developer that is in a manner that is for the cause of completing work that is necessary on the Development.

Section 8.04. **Storage of Inoperable, Unregistered, Junk Motor Vehicles.** No Lot shall be used as a depository for abandoned or junked motorized vehicles of any type. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. These vehicles may be kept in an enclosed structure for storage and restoration, providing that the storage facility meets all design criteria guidelines and the square footage limitations herein. Commercial business involving the storage, restoration, repair, or resale of any motorized vehicle is allowed on the Property. No dismantling or assembling of motor vehicles, boats, trailers, or other machinery or equipment shall be permitted, except in an enclosed structure or behind the main commercial building and behind a screen wall preapproved by BRC, and not in open view of Highway 380, any subdivision street, any adjacent street, or any adjacent

Commercial Building.

Section 8.05. **Storage of Other Parts & Machinery.** No accessories, parts, or objects used with cars, boats, buses, trucks, trailers, camp trailers, mobile homes or the like shall be kept on any Lot other than in a garage or other enclosed structure approved by the BRC. No farm, gardening, or landscape accessories of any type shall be kept on any Lot other than in an enclosed storage area or behind commercial building and behind a screen wall preapproved by BRC.

Section 8.06 **Garbage, Trash, & Rubbish Disposal.** No garbage, trash, rubbish, manure, or debris of any kind shall be dumped or allowed to accumulate on any portion of the Property. All rubbish, trash, or garbage shall be kept in sanitary refuse containers with tightly fitting lids, shall not be visible from adjoining Commercial Building, and shall be disposed of regularly. Burning of grass, leaves, limbs, felled trees, and stumps is permitted, providing that all applicable federal, state, and local burning laws are complied with, and that care is taken to control the fire. No man made substance of any kind can be burned on the Property.

Section 8.07. **Firearms.** The discharge of any firearms from any Lot on the Property is prohibited.

Section 8.08. **Sewage.** No outside toilets shall be used, constructed, or permitted other than self contained temporary toilets used during construction of any building or outbuilding or for specific pre-approved events such as carnivals, fairs and such. No installation of any kind for disposal of sewage shall be constructed or maintained which would result in untreated sewage or septic tank drainage being drained onto or into the surface of any portion of the Property. No means of sewage disposal may be installed, used, or maintained except as outlined in Section 7.08.

Section 8.09. **Heavy Equipment.** All heavy equipment of any type (e.g. tractors, dozers, motor graders, excavators, backhoes, etc.) must be parked or stored in an enclosed structure or behind the rear exterior wall of the building, and as inconspicuously as possible, except during construction or landscaping of the Lot.

Section 8.10. **Oil, Gas, and Mineral Production.** No oil drilling, oil development operations, refining, quarrying, or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks,, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick of other structure designed for use in boring for oil or natural gas shall be permitted on any Lot.

Section 8.11. **Noise Pollution.** No exterior speakers, horns, whistles, bells, or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Commercial Building and improvements) shall be placed upon any Lot if these items can be heard by any adjacent Landowner. Livestock and pets shall be kept in such a way as to minimize the noise pollution of adjacent landowners. Any other activity which shall cause excessive noise pollution to adjacent landowners is prohibited (e.g. the racing of car engines, loud generators placed near the property edge, etc.).

Section 8.12. **Offensive Aesthetics.** No structure or artwork of an obscene or offensive nature shall be allowed, if this structure or art work is visible from Highway 380, any subdivision road, or any adjacent Commercial Building. The BRC shall have the right to review and approve any item placed upon any Lot, including, but not limited to the following: sunlight obstructions, roof top solar collectors, flagpoles, flags, pennants, ribbons, streamers, exterior outbuildings, etc., for the purpose of maintaining an aesthetically pleasing Property. The drying of clothes in public view is prohibited.

Section 8.13. **Offensive Odors.** The Owner(s) of any pets or livestock shall maintain them, plus their facilities, in such a manner that no foul or obnoxious odors exist on their Tract. Any other activity which creates a foul or obnoxious odor that can be detected by an adjacent landowner is prohibited.

Section 8.14. **Construction Activities.** Except in an emergency, or when other unusual circumstances exist, as determined by the BRC, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 9:00 p.m.

ARTICLE 9.
OTHER GENERAL RESTRICTIONS

Section 9.01. **Lot Subdivision.** No Lot or commercial unit within a Lot may be further subdivided. There is no restriction on moving lots lines between contiguous lots as long as the final acreage of the lots is not less than 0.5 acre and the frontage of each lot does not prevent adequate access to the lot.

Section 9.02 **Consolidation of Lots.** With prior written approval of the BRC, any person(s) owning two or more adjoining lots may consolidate such Lots into a single Lot with the privilege of constructing improvements permitted herein. The resulting Lot shall be considered a single Lot for all purposes under this Declaration, including, but not limited to the minimum setback lines (excluding the line eliminated by the consolidation.

Section 9.03. **Right to Amend and Impose Additional Restrictions and/or Supplemental Covenants.** The Developer, during the Control Period, shall have the right to amend and impose additional restrictions, subject to Section 9.03 (below), which, in the Developer's opinion, are necessary to enhance or protect the value, desirability, or attractiveness of said Property. The Developer shall have the right to add or remove acreage from the control of these Restrictions. In addition, the developer has the right to create Supplemental Covenants that are pertinent to only specific phases, lots, or groups of lots within the Development.

Section 9.04. **Absolute Restrictions as Long as Acreage is Within the Property.** Certain absolute minimum restrictions shall be kept in force and shall not be amended or revised by the Developer or the BRC for the purpose of making such covenants less restrictive. The absolute restrictions shall include:

- (a) A 1,000 square foot minimum Commercial Building requirement, and an 2,000 square foot minimum two story Commercial Building requirement.
- (b) Site Built Structures only shall be permitted on any lot.
- (c) Sections 3.01 to Sections 3.05 in their entirety.

If any acreage within the Property is withdrawn, with approval of BRC and Developer, from the Property, than these absolute restrictions shall not apply to such Property.

Section 9.05. **Compliance With Any and All Government Regulations.** Any Owner, their successors, or assigns, any Builder, Contractor, or any Subcontractor performing any activity on the Property shall comply with any and all government regulations that are pertinent to the activity being performed.

Section 9.06. **Addition or Withdrawal of Acreage to/from the Property and Restrictions.** The Developer, at his sole discretion during the Control Period, shall have the right to add to or withdraw from any acreage covered by this Declaration by filing such notice of intent in the Real Property Records of Lincoln County, accompanied with a legal description of such affected acreage.

Section 9.07. **Enforcement, Liability, and Injunctive Relief.** The Developer, its successors and assigns, other owners of the Property, their successors and assigns, and lien holders of the Property, their successors and assigns, easement holders of the Property, the Village of Capitan and any other Regulatory agencies having jurisdiction over the Property, may, at their discretion, seek enforcement of these Restrictions through injunctive relief provided the offending Lot owner shall first be given written notice of alleged violations and the opportunity, within 60 days, to correct and/or remedy any such violation prior to a suit for injunctive relief being filed. The Developer, however, shall not be legally required to enforce these Restrictions. The prevailing party shall be entitled to recover any reasonable expenses, attorney's fees and cost incurred.

Section 9.08. **Agreed Arbitration.** In the event the parties agree to Arbitration, and in the event the parties agree as to the person who will act as the Arbitrator, then in such event all claims, disputes, and matters arising out of or relating to this Declaration shall be subject to arbitration providing the offending Tract owner shall first be given written notice of alleged violations and the opportunity, within 60 days, to

correct and/or remedy any such violation prior to arbitration. The parties agree to share the arbitrator's fee. The location of the arbitration will be in Lincoln County and governed by the laws of the State of New Mexico. Any decision of an arbitrator in such arbitration shall be final and binding. The prevailing party shall be entitled to recover its reasonable attorney fees, costs and expenses incurred.

Executed this ___ day of _____, 2011.

G. Phil Berryman, Managing Member
Conquest Investments, LLC
A New Mexico Limited Liability Company

STATE OF NEW MEXICO, COUNTY OF LINCOLN

This instrument was acknowledged before me on this ___ day of _____, 2011, by G. Phil Berryman, Managing Member of Conquest Investments, LLC on behalf of said Company.

Notary Public in and for the State of New Mexico

Notary Expires on