

BYLAWS
OF
LOS NIDOS HOMEOWNERS ASSOCIATION

LOS NIDOS HOMEOWNERS ASSOCIATION, a New Mexico corporation, does hereby adopt the following bylaws which shall govern the administration of LOS NIDOS, SUBDIVISION.

ARTICLE I

DEFINITIONS

Section 1. "ASSOCIATION" shall mean and refer to LOS NIDOS HOMEOWNERS ASSOCIATION, its successors and assigns.

Section 2. "PROPERTIES" shall mean and refer to that certain real property described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association by action of Declarant or by annexation.

Section 3. "COMMON AREA" or "COMMON PROPERTIES" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

Section 4. "LOT" or "LOTS" shall mean and refer any plot of land shown as intended for residential facilities on any recorded subdivision map of the property.

Section 5. "DECLARATION" means the Declaration of Covenants, Conditions, and Restrictions of LOS NIDOS SUBDIVISION and any supplemental declaration.

Section 7. "SUPPLEMENTAL DECLARATION" means any instrument which amends or terminates the Declaration, or which accomplishes some action taken under the Declaration, and which has been executed and acknowledged in the manner required by the Declaration and recorded with the County Clerk of Santa Fe County, New Mexico.

Section 8. "BOARD" means the Board of Directors of LOS NIDOS HOMEOWNERS ASSOCIATION.

Section 9. "REGULATIONS" means rules promulgated by the Board from time to time in the manner permitted by the Articles of Incorporation and Bylaws of the Association.

Section 10. **"THE PROPERTY"** means the property subject to this Declaration and any additions thereto made in accordance with the terms of this Declaration.

Section 11. **"THE DEVELOPER"** means D.S.F. II LIMITED PARTNERSHIP, Edmund L. London, Jordan London, and Berton London, General Partners.

Section 12. **"MEMBER"** shall mean and refer to every person or entity who holds membership in the Association.

Section 13. **"OWNER"** shall mean and refer to the record owner, whether one or more persons or entities, of equitable title, or legal title if equitable and legal titles have merged, of Lot.

Section 14. **"LOS NIDOS - SPECIAL MAINTENANCE DISTRICT"** shall mean the area designated for drainage easements shown on Los Nidos Subdivision Plat.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **MEMBERSHIP.** Every person or entity who is a record owner, as "Owner" is defined in Article I, Section 13, of any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association. No owner shall have more than one membership per lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. **VOTING RIGHTS.** The association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 of this Article, with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership pursuant to Section 1 of this Article. When more than one person or entity holds such interest or interests in any Lot, all such persons or entities shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership pursuant to Section 1 of this Article, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events whichever occurs earlier:

(a) When the total vote outstanding in the Class A membership equals the total vote outstanding in the Class B membership, or

(b) On January 1, 2000.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section 1.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. **MEMBERS' EASEMENTS OF ENJOYMENT.** Subject to the provisions of Section 2 of this Article and subject to the provisions of Los Nidos - Special Maintenance District guidelines imposed by the City of Santa Fe, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. **EXTENT OF MEMBERS' EASEMENTS.** The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Developer and of the Association in accordance with its Articles and By-laws, to make assessments against an Owner, to borrow money for the purpose of improving the common properties, and in aid thereof, to mortgage said properties. In the event of a default upon any such mortgage, the lenders' rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members, and, if necessary, to open the enjoyment to a wider public until the mortgage debt is satisfied; whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and
- (b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of every

member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

- (d) The right of the Association to charge any reasonable admission or other fees for the use and maintenance of the common properties; and
- (e) The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the members entitled to cast two-thirds of the votes of each Class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least ninety (90) days in advance of any action taken.

Section 3. **DELEGATION OF USE.** Any member may delegate his right of use and enjoyment of the common properties and facilities to members of his family, his tenants or his contract purchasers who reside on the property. Any person to whom said rights of use and enjoyment are delegated shall be subject to the same conditions, restrictions and limitations applicable to the delegating member.

ARTICLE IV

MAINTENANCE ASSESSMENTS

Section 1. **ANNUAL ASSESSMENTS.** Each member shall be liable for the payment of annual assessments or charges and special assessments for capital improvements, and costs incurred for Los Nidos - Special Maintenance District and drainage easements. The Board will set the annual assessment amount for each calendar year called the "assessment year". Until the assessment year beginning January 1, 1996, the annual assessment for Lots, other than those owned by the developer and held for sale, may not exceed \$360.00 per Lot per assessment year and the annual assessment for

Lots owned by the developer held for sale may not exceed \$120.00 per Lot per assessment year. From and after January 1, 1996, the amount of the annual assessment may be increased by a vote of the members as provided in said Article IV of the Declaration.

The annual assessment will be due and payable in two equal semi-annual installments during the assessment year on the day of the month (which need not be uniform as to all Lots) set by the Board.

The association may change the maximum and basis of the assessments fixed for any period therein specified, provided that any such change shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be sent to all members at least 30 days in advance and shall set forth the purpose of the meeting.

Section 2. **SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any maintenance of any drainage easements, any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the vote of each Class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

ARTICLE V

MEETINGS

The annual meeting of the members shall be held during April of each year in Santa Fe, New Mexico, at the time and place fixed by the Board in the notice mailed to each member. Special meetings of the members may be called by the Board, the President or members entitled to vote at least 50% of the votes of any class of membership.

ARTICLE VI

BOARD OF DIRECTORS

Section 1. **NUMBER AND TENURE.** The property and affairs of the Association shall be managed by the Board of Directors. The first Board of Directors will consist of the three (3) Directors named in the Articles and will serve until the First Annual

Meeting of Members, at which time a new Board consisting of three (3) Directors will be elected by the members. Thereafter, the Board will consist of three (3) Directors.

Section 2. QUALIFICATIONS, REMOVAL, VACANCIES. Directors need not be a member of the Association. Directors will hold office until their successor is elected and qualifies. A Director may be removed with or without cause upon a majority vote of the Directors for persistent failure to attend regular meetings of the Board. In the event of death, resignation, or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 3. COMPENSATION. Directors shall not be paid for services rendered as a Director, but shall be entitled to receive reimbursement for actual expenses incurred in the performance of their duties.

Section 4. MEETINGS OF THE BOARD. The Annual Meeting of the Board will be held immediately following the Annual Meeting of the Members. Regular Meetings of the Board shall be fixed from time to time by Board Resolution. Special Meetings of the Board may be called by the President or any two (2) Directors by giving written notice to each Director at least three (3) days prior to such Special Meeting. Such notice of Special Meeting shall specify the time, place and purpose of the meeting.

Section 5. ACTION BY BOARD. The Directors may only act as a Board. The Board may act by majority vote of the Directors present at a duly called meeting at which a quorum is present. A majority of the Directors then in office present in person constitutes a quorum. The Board may also act without a meeting, but only by unanimous consent in writing executed by all Directors then in office.

Section 6. NOMINATION OF DIRECTORS. Nominations for election to the Board shall be made by the Nominating Committee at least twenty (20) days prior to the Annual Meeting of Members. Such nominations shall be delivered to the Secretary. The Nominating Committee may make as many nominations as it desires, but shall nominate not less than the number of directorships to be filled. Such nominations may be made from among members or non-members of the Association.

Section 7. ELECTION OF DIRECTORS. The Secretary will prepare a ballot describing the vacancies to be filled, setting forth the nominees selected by the Nominating Committee, and providing a space for a write-in vote for each vacancy. The ballot will be included with the notice of the annual meeting to be mailed to each member. Each member or proxy holder will be entitled to one vote for each directorship to be filled. The completed ballot must be returned by mail or delivered to the Secretary before the commencement of the Annual Meeting of Members. The ballot must be signed and dated by the member or proxy holder. The Secretary will count the ballots and announce the results at the Annual Meeting of Members. The names

receiving the largest number of votes will be elected as directors. Any controversy as to the validity of any ballot or the right of any member or proxy holder to vote will be determined by the Board of Directors.

Section 8. POWERS AND DUTIES OF BOARD.

(a) The Board shall have power:

- (1) To call special meetings of the members at its discretion.
- (2) To enter into such contracts with third parties as it deems necessary and desirable for the discharge of its duties, including the maintenance, repair and restoration of the Common Properties and any drainage easements.
- (3) To appoint and remove, at its discretion, all officers, agents and employees of the Association, to fix their compensation, and to require of them such security or fidelity bond as may be deemed expedient.
- (4) To establish, levy, assess and collect annual and special assessments pursuant to Article IV of the Declaration.
- (5) To adopt and publish rules and regulations governing the use of the Common Properties and the personal conduct of the members and their guests thereon.
- (6) To engage or employ attorneys, accountants and such other professional assistance as may be deemed necessary.
- (7) To bring such suits in the name of the Association at law or in equity, as may be deemed necessary to enforce the covenants, conditions and restrictions set forth in the Declaration.
- (8) To exercise all powers in the name of the Association set forth in the Declaration, Articles or these By-laws, except such powers as are reserved to the members.

(b) The Board shall have the duty:

- (1) To maintain a complete record of its actions and corporate affairs and to report thereon at the Annual Meeting of Members.
- (2) To supervise all officers, agents and employees of the Association.

- (3) As more particularly set forth in Article IV of the Declaration:
 - (i) To fix the amount of the annual assessment against each Lot prior to January 1 of each year;
 - (ii) To prepare a roster of the annual assessments applicable to each Lot to be maintained in the office of the Association, and to be kept open for examination by any member;
 - (iii) To send written notice of the annual assessment to each member; and
 - (iv) To issue, or cause to be issued, upon demand by any member or interested person a certificate setting forth whether any annual or special assessment has been paid.
- (4) To maintain, repair, rebuild and keep in good condition all the Common Properties.
- (5) To pay all valid taxes, liens or other charges against the Common Properties.
- (6) To maintain fire and hazard insurance, if applicable, and liability insurance on the Common Properties.
- (7) To perform all other obligations of the Association set forth in the Declaration, Articles and these Bylaws.

Section 9. COMMITTEES. The Board shall appoint the following standing committees, each of which shall consist of a chairman who shall be a Director and two (2) members who shall not be Directors and each of which shall serve from the close of the Annual Meeting of Members to the close of the next Annual Meeting of Members.

(a) The Nominating Committee, which shall have the duties set forth in Section 6 of this Article VI.

(b) The Maintenance Committee, which shall advise the Board on all matters pertaining to maintenance, repair and improvements to the Common Properties.

(c) The Audit and Budget Committee, which shall prepare the annual budget for the next-ensuing year, approve or disapprove the balance sheet and operating statement for the previous year, and supervise the annual audit of the Association's books. The Treasurer shall serve as an ex-officio member of this committee.

ARTICLE VII

OFFICERS

Section 1. **ENUMERATION OF OFFICES.** The offices of this Association shall be a President, and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. **ELECTION OF OFFICERS.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. **TERM.** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. **SPECIAL APPOINTMENTS.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. **RESIGNATION AND REMOVAL.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

Section 6. **VACANCIES.** A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. **MULTIPLE OFFICES.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. **DUTIES.** The duties of the officers are as follows:

PRESIDENT

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases,

mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

VICE-PRESIDENT

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

SECRETARY

(c) The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to its members.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. **SEAL.** The Board may, but need not, adopt a form of seal to be used by the Association.

Section 2. **WAIVER OF NOTICE.** Any notice of meeting required by the Declaration of these Bylaws will be considered given when mailed to the last address shown by the records of the Association or when delivered. Any such notice requirement will be considered waived by any person who waives notice in writing, either before or after the meeting, or by any person who appears at the meeting for any reason other than to contest the validity of the call of the meeting.

Section 3. **INDEMNITY.** The Association will defend, indemnify and hold harmless each member, director, officer or committee member of the Association against expenses and liabilities reasonably incurred in connection with any claim or lawsuit in

which such member, director, officer or committee member is made a party by reason of the performance of his duties in such capacity; provided, however, that this provision does not apply to gross negligence or willful misconduct by the indemnitee.

Section 4. AMENDMENTS. These Bylaws may be amended at any regular or special meeting of the Board by majority vote of the Directors present at such meeting; provided, however, that any provision of these Bylaws which is controlled by the Articles or the Declaration may not be amended except as provided in the Articles or Declaration.

Section 5. CONSTRUCTION. In the case of conflict between the Articles and these Bylaws, the Articles shall control. In the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 6. SEVERABILITY. The invalidity of any provision of these Bylaws shall not affect the validity of the remaining provisions of these Bylaws.