

**BY LAWS**  
**OF**  
**BLUESTREAM HOMEOWNERS ASSOCIATION**

The affairs of the Bluestream Homeowners Association, a New Mexico nonprofit corporation (hereunder referred to as the "Association"), shall be administered and regulated pursuant to the following Bylaws, to-wit:

**ARTICLE 1**  
**OBJECT**

**1.01 Purpose.** The purpose of the Association is to govern the real estate development (hereinafter "Subdivision" situated in the County of Colfax, State of New Mexico, which is known as Bluestream Subdivision, and which property is protected pursuant to the provisions of the Declaration of Restrictive Covenants of the Bluestream and Subdivision (hereinafter referred to as the "Declaration") filed on the \_\_\_\_\_ day of \_\_\_\_\_, Document Number \_\_\_\_\_). These Bylaws are subject to the provisions of the Declaration and, in the event any Bylaw adopted by the Association is or becomes inconsistent with the Declaration, the provisions of the Declaration shall control and such Bylaws shall be void ab initio.

**1.02 Owners Subject to Bylaws.** All present or future owners, present or future occupants, or any other person or entity that might use in any manner any improvement on or any portion of the Subdivision are subject to the regulations set forth in these Bylaws. The mere acquisition or rental by any person of any of the lots in the development or the mere act of occupancy of any of said lots will signify that these Bylaws are accepted, ratified and will be complied with by such person.

**1.03 Principal Office.** The principal office of the corporation shall be located at 333 Rio Rancho Drive, NE, Rio Rancho, New Mexico, 87124

**ARTICLE 2**  
**DEFINITIONS**

**2.01 Definitions.**

a) "Association" shall mean BLUESTREAM HOMEOWNERS' ASSOCIATION, a New Mexico nonprofit corporation, and any successor corporation into which it; shall be merged or to which shall be assigned and delegated all of its rights, powers and duties hereunder.

b) "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

- c) "Common Area" shall mean any roads, open space, gates, trails and facilities constructed by the Developer and/or Association, including but not limited to, culverts, structures, pipes and equipment thereon and personal property incident thereto, and such other property owned and maintained by the Association for the common benefit and enjoyment of the Owners of the Property.
- d) "Declarant" or "Developer" shall mean and refer to Bluestream Properties, Inc a New Mexico Corporation and its successors and assigns.
- e) "Declaration" shall mean and refer to the Declaration of Restrictive Covenants for Bluestream Subdivision recorded in the Office of the County Clerk Colfax County, New Mexico.
- f) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties. Ownership of a Lot shall include Membership in the Association and rights appurtenant thereto.
- g) "Member" shall mean and refer to the owner or owners of a Lot.
- h) "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including Declarant and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- i) "Properties" shall mean and refer to that certain real property described in the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**ARTICLE 3**  
**MEMBERSHIP, MEMBERS' RIGHTS, VOTING MAJORITY**  
**OF OWNERS QUORUM, PROXIES**

**3.1 Membership.** Ownership of a Lot is required in order to qualify for membership in the Association. Every person or entity who is the beneficial owner of a fee simple interest, including the purchaser under a contract of sale, in any Lot shall be a member of the Association; provided that any person or entity holding such interest as security for the payment of a debt or performance of any obligation shall not be a member; provided, further, that any person or entity who acquires such interest at a judicial sale or by conveyance in lieu of foreclosure shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Declaration. Such membership shall terminate without any formal Association action whenever such person ceases to own a Lot, but such termination shall not relieve or release any such

former Owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in this Association, or impair any rights or remedies which the Board of Directors of the Association or others may have against such former Owner and member arising out of or in any way connected with Lot ownership, Association membership, and the Declaration or obligations incident thereto.

**3.2 Classes of Membership.** The Association shall have two (2) classes of membership, Class I and Class II.

**3.3 Voting.**

**3.3.1 Class I.** All members shall be Class I members, except the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity is an Owner of any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such owners determine, but in no event shall such multiple owners vote more votes than they are entitled by the Lots owned.

**3.3.2 Class II.** The Declarant shall be the only Class II member and shall be entitled to four (4) times the votes as set out under Class I, above, for each Lot owned by Declarant prior to the initial conveyance of such Lot by Declarant (the assignment or conveyance of all of Declarant's interest in the Subdivision shall not be such an initial conveyance). The Class II membership of Declarant shall be converted to Class I membership and Declarant's Class II membership shall terminate upon the earliest of:

- a. the sale by Declarant of the seventeenth (17<sup>th</sup>) Lot.; or
- b. January 1, 2012; or
- c. when Declarant, in the sole discretion of the Declarant, so decides.

**3.3.3 Right to Vote.** Each Owner shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may not cumulate his votes. The right to vote may not be severed from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy, but no Owner may vote by proxy for more than one (1) additional Owner.

**3.3.4 Multiple Ownership and Voting Rights.** If title to any Lot shall be held by two or more persons, then each such co-tenant shall be a member of this Association but all such co-tenants shall be entitled to only one vote per Lot. Any one co-tenant owner of a Lot attending a meeting may, and shall be deemed to have, the authority to cast the vote of all other co-tenants of that Lot who are absent from such meeting and have not executed a proxy with respect to their vote.

**3.4 Definition of Percentage.** When any provision of the Declaration or these Bylaws calls for the vote or the consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

**3.4.1** whenever a vote of the members is required, it is sufficient to obtain the written consent of members entitled to vote; and

**3.4.2** the percentage requirement shall be a percentage of the total voting power of the Association or of the total voting power of the required class or group and not a percentage of the number of members of the Association, class or group.

"Voting power of the Association" means the total number of votes of all members at the time the pertinent vote is to be taken.

Any provision of these Bylaws requiring a vote by the members shall be satisfied if the required percentage, or number of members give their written consent. In any election held pursuant to the requirements of these Bylaws, ballots may be transmitted to owners in the manner provided for the giving of notice.

**3.5 Quorum.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of members having at least fifty percent (50%) of the voting power of the Association shall constitute a quorum. Except as otherwise provided in the Declaration, the affirmative vote of members who hold a majority of the votes present, either in person or by proxy, shall be required to transact business and to adopt decisions binding on all Owners.

**3.6 Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing, dated and filed with the Secretary before the appointed time of each meeting, but no Owner may vote for more than one (1) additional Owner. Revocation of any proxy may be made at any time by written notice to the Secretary. A revocation of a proxy shall not affect any vote or act taken or authorized pursuant thereto prior to such notice to the Secretary. A proxy shall terminate one year after its date, unless it specifies a shorter term. Conveyance of a Lot or undivided interest therein by an Owner shall be deemed revocation of any proxy executed by such Owner unless the successor in interest to such Owner assumes or takes subject to a mortgage containing an irrevocable proxy.

**3.7 Conduct of Meetings.** The President shall preside over all meetings of the Association and Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat.

**ARTICLE 4**  
**ADMINISTRATION**

**4.01 Association Responsibilities.** The Owners of the Lots will constitute the Bluestream Homeowners' Association, which will have the responsibility of the administering the development through a Board of Directors.

**4.02 Place of Meetings.** Meetings of the Members of the Association shall be held at such place as the Board of Directors may determine.

**4.03 Annual Meeting.** The first annual meeting of the Members of the Association shall be held on a date selected by the Board of Directors within eighteen (18) months from the date of incorporation. Thereafter, the annual meetings of the Association shall be held on a date approximately 360 days thereafter as selected by the Board of Directors, but not later than March 1 st of each year. At such subsequent meetings there shall be election, by ballot, for the Members of a Board of Directors subject to election in accordance with the requirements of paragraph 5.05 of Article 5 of these Bylaws and consideration of the Annual Budget per Paragraph 14.03 of Article 14 of these Bylaws. The Members may also transact such other business of the Association as may properly come before the meeting.

**4.04 Special Meetings.** It shall be the duty of the President to call a special meeting of the Members of the Association as directed by resolution of the Board of Directors or upon petition signed by Members having at least twenty percent (20%) of the voting power of the Association, which resolution or petition shall be presented to the President. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of the Members having at least seventy-five percent (75%) of the voting power of the Association, either in person or by proxy. Any such meeting shall be held within thirty (30) days after receipt by the President of such resolution or petition.

**4.05 Notice of Meeting.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Member of the Association and to each member of the Board of Directors, at least fifteen (15) days and not more than sixty (60) days prior to such meeting or as otherwise provided herein. The mailing of a notice in the manner provided in this paragraph shall be considered notice served. The certificate of the Secretary that notice was properly given as provided in these Bylaws shall be prima facie evidence thereof. Notices of meetings shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration of these Bylaws, any Annual Budget changes and any proposal to remove the Director.

**4.06 Adjourned Meetings.** If any meeting of Members of the Association cannot be organized because a quorum is not present, the Members who are present, either in person

or by proxy, may adjourn the meeting, from time to time, for periods of no longer than a week, until a quorum is obtained or until a conclusion can be reached. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without notice.

**4.07 Rules of Meetings.** The Board may prescribe reasonable rules for the conduct of all meetings of the Board and of the Members of the Association and in the absence of such rules, Robert's Rules of Order shall be used.

## **ARTICLE 5** **BOARD OF DIRECTORS**

**5.01 Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, at least two of whom shall be Lot Owners and Members of the Association. The number of directors may be increased by an amendment of the Declaration and these Bylaws; provided, however, that the number of directors shall not be reduced to less than three (3).

Until their initial terms expire, the Board of Directors shall consist of those individuals named as such in the Association's Articles of Incorporation. Such original directors need not be a Lot Owner or Member of the Association. .

**5.02 Power and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors may do all such acts and things as are not by law or by the Articles of Incorporation or these Bylaws or by the Declaration directed to be exercised and done by the Lot Owners. .

**5.03 Other Powers and Duties.** In addition to the powers and duties permitted by law, the Board of Directors shall be empowered and shall have the duties as follows:

- (a) to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the Articles and these Bylaws;
- (b) to adopt, establish, make, publish and enforce compliance with such reasonable Rules and Regulations as may be necessary for the operation, use and occupancy of the Subdivision with the right to amend same from time to time; a copy of such Rules and Regulations shall be delivered to or mailed to each Member promptly upon adoption thereof;
- (c) to operate any community utility systems; .
- (d) to keep in good order, condition and repair all of the roads or other common facilities.

- (e) to fix, determine, levy and collect periodically, the prorated assessments to be paid by each of the Owners towards the gross expenses of the entire Subdivision and to adjust, decrease or increase the amount of the assessments, and to credit any excess of assessments over the expenses and cash reserves to the Lot Owners against the next succeeding assessment period; to levy and collect special assessment whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital expenses, or because of emergencies; all assessments shall be in statement form and shall have set forth the detail of the various expenses for which the assessments are being made;
- (f) to impose penalties and collect delinquent assessments by suit or otherwise and to enjoin or seek damages from an owner as is provided in the Declaration and these Bylaws;
- (g) to establish a bank account for the common treasury and for all separate funds which are required or may be deemed advisable by the Board of Directors;
- (h) to keep and maintain detailed and accurate books and records showing in chronological order all of the receipts, expenses or disbursements pursuant to appropriate specificity and itemization and to permit examination thereof at any reasonable time by each of the Owners and Mortgagees, and upon affirmative vote of at least a majority of the Lot Owners, to cause a complete audit to be made of the books and accounts by a competent certified public accountant;
- (i) to prepare and deliver annually to each Owner a statement showing all receipts, expenses or disbursements since the last statement;
- (j) to foreclose the lien against a Lot for default in the payment of assessments for Association expenses;
- (k) to designate, pay and remove the personnel necessary to carry out the duties and responsibilities of the Association;
- (l) to provide for reimbursement of expenses, if any, of directors and officers and for reasonable compensation of employees of the Association; this provision shall not preclude the Board of Directors from employing a director as an employee of the Association nor preclude the contracting with a director or Declarant for the management of the development in accordance with the provisions of Section 5.16 of this Article;
- (m) to declare the office of a member of the Board of Directors to be vacant in the event

such director shall be absent from three (3) consecutive meetings of the Board of Directors;

(n) to suspend the voting rights of a Member of the Association for failure to comply with these Bylaws or the Regulations of the Association or with other obligations of the Owners pursuant to the Declaration;

(o) to acquire, hold and dispose of Lots and mortgage the same if such expenditures and hypothecation are included in the budget adopted by the Association;

(p) in general, to carry on the administration of this Association and to do all of those things necessary and reasonable and not inconsistent with the Declaration and these Bylaws in order to carry out the governing and operation of the Subdivision;

(q) issue, or to cause an appropriate officer to issue, upon demand by any Member, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(r) procure and maintain reasonable liability and hazard insurance on property owned by the Association;

(s) cause all officers or employees having fiscal responsibilities to be bonded, if and as it may deem appropriate at a cost of the Association;

(t) fund, and cause all bills of the Association to be paid from the assessment

(u) Participate in mergers and consolidation with other nonprofit corporations organized for the same purpose or annex, additional property and Common Area.

**5.04 Managing Agent.** The Board of Directors may employ, for the Association, a managing agent, at a compensation established by the Board of Directors, to perform such day-to-day management duties and services as the Board of Directors shall delegate and authorize. The term of any contract with a managing agent shall not exceed one (1) year. Nothing shall preclude the Declarant from serving as the Managing Agent so long as all fees paid are not in excess of fees charged by others for similar services.

**5.05 Election and Term of Office.**

(a) At the first annual meeting of the Association, the initial term of office of one (1) member of the Board of Directors shall be fixed at three (3) years. The initial term of one director shall be two (2) years and of one (1) director one (1) year. As each such

initial term expires, the next successive term shall be for three (3) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected, provided that nothing herein contained shall prevent the election of a director whose term has expired to a new term as such director. Directors elected as a result of expansion of the Board shall serve three (3) year terms. No director shall serve in excess of six (6) consecutive years.

(b) Only persons qualified to be members of the Board may be elected.

**5.06 Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Members of the Association shall be filled by decision of the remaining directors, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected at the next annual meet inn of the Members of the Association

**5.07 Removal of Directors.** At any regular or special meeting of the Members of the Association duly called, anyone or more of the directors, excepting any director named in the Articles of Incorporation, may be removed with or without cause by the vote of a majority of the Lot Owners, and a successor may then and there be elected to fill each vacancy thus created for the unexpired term(s) of said removed director(s). Any director whose removal has been proposed by the Members shall be given the opportunity to be heard at the meeting.

**5.08 Organizational Meeting** . The first meeting of newly elected Board of Directors shall be held within thirty (30) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected and no notice shall be necessary to the newly elected directors in order to legally constitute such meeting, providing a majority of the whole Board of Directors shall be present.

**5.09 Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors but at least one such meeting shall be held each year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, facsimile, or telephone at least seven (7) days prior to the day named for such meetings. There shall be a regular meeting of the Board of Directors immediately following the annual meeting of Members of the Association held pursuant to paragraph 4.03 hereof, and notice of such annual meeting to Members of the Association in accordance with paragraph 4.05 hereof shall be deemed notice to each director of such regular meeting. .

**5.10 Special Meetings.** Special meetings of the Board of Directors may be called by the President on seven (7) days notice to each director, given personally, or by mail, facsimile, or telephone, which notice shall state the time, place (as herein provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or

Secretary in like manner and on like notice on the written request of at least two (2) directors.

**5.11 Waiver of Notice.** Before or at any meeting of the Board of Directors, any director may in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**5.12 Board of Directors' Quorum.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time for periods of no longer than one (1) week until a quorum is obtained or until a conclusion can be reached. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**5.13 Action Taken Without a Meeting.** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action shall have the same effect as though taken at a meeting of the Board. Notwithstanding the foregoing, regular or special meetings of the Board of Directors may be held by telephone conference.

**5.14 Compensation.** The members of the Board of Directors, including officers, shall serve without salary or compensation, but may be reimbursed for actual and reasonable out-of-pocket expenses authorized by the Board of Directors. Members and officers of the Board of Directors may be employees of the Association, and their compensation (if any) shall be set by the Board pursuant to the conditions of Paragraph 5.16 of these Bylaws.

**5.15 Fidelity Bonds and Directors & Officers Liability Insurance.** The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds, furnish adequate fidelity bonds. The Association shall also carry Directors and Liability Insurance in amounts deemed adequate by the Board. The premiums on such bonds and Directors and Officers Liability Insurance shall be paid by the Association.

**5.16 Conflict of Interest of Directors.** Each member of the Board of Directors shall exercise his powers and duties in good faith and with a view to the interests of the Association. No contract or other transaction between the Association and any of its directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the directors of the Association are directors or officers or

are pecuniary or otherwise interested, is either void or voidable because any such director is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, if the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed, and either of the conditions specified in the following Subparagraph ("a") or ("b") exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose or

(b) The fact of the common directorate or interest is disclosed or known to Owners having at least a majority of the voting power of the Association, and the owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose.

(c) Any common or interested directors may be counted in determining The presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, but such common or interested director may not vote on any matter in which such director is an interested party.

**5.17 Nomination and Election of Directors.** Nominations for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a chairman, who shall also be a member of the Board of Directors, and two (2) or more members of the Association. The nomination committee shall be appointed by the Board of Directors at least one (1) month prior to each annual meeting of the Members, to serve until the close of such annual meeting and such appointment shall be announced at each annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or Non-Members. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. The Board of Directors shall elect its Chair annually. No Chair shall serve more than two (2) consecutive one (1) year terms.

## **ARTICLE 6**

## **OFFICERS**

**6.01 Designation.** The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer and such other officers as the Board may from time to time create by resolution, all of whom shall be elected by the Board of Directors.

**6.02 Election of Officers.** The officers of the Association shall be elected annually, from the membership of the Association, by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. Vacancies in the officers of the Association shall be filled by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced. One person may hold concurrently the office of Vice President and Secretary or Vice President and Treasurer, but the offices of Secretary and Treasurer shall not be held concurrently by one person. All officers, except the initial officers and the Secretary, must be Members of the Association or officers or directors of corporate owners, partners in any partnership or trustees of any trust owning a Lot, or other persons in a similar situation.

**6.03 Removal or Resignation of Officers.** Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for that purpose. 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.

**6.04 President.** The President shall be elected from among the Board of Directors and shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of President of a nonprofit corporation, including, but not limited to, the preparation, execution, certification and recordation of amendments to the Declaration, the power to appoint committees from among notes.

**6.05 Vice President.** The Vice President shall have all the powers and authority and perform all the functions and duties of the President, in the absence of the President, or due- to the President's inability, for any reason, to exercise such powers and functions or perform such duties.

**6.06 Secretary.** The Secretary shall take and maintain all the minutes of the meetings of the Board of Directors of the Association. The secretary shall have charge of such books and papers as the Board of Directors may direct; and shall, in general, perform all the duties incident to the office of Secretary. The Secretary shall compile and keep up to date, at the

principal office of the Association, a complete list of Members and their last known addresses as shown on the records of the Association and the number of the Lot owned by said Member. Such list shall be opened to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

**6.07 Treasurer.** 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; and shall pay all charges and obligations of the Association before same are due; keep proper books of account; cause an annual review of the Association's 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 represented to the membership at its regular annual meeting and deliver a copy of each to the Members.

**6.08 Term Limit.** No officer shall serve more than three (3) consecutive one (1) year terms, ("First Term") but may be reelected for an additional three (3) consecutive one (1) year terms provided that said officer has not served as an officer for a minimum of one (1) year after the expiration of the First Term.

**6.09 Compensation.** Officers may be employees of the Association and their compensation (if any) shall be set by the Board of Directors pursuant to the provisions of Paragraph 5.16 of these Bylaws. In general, officers shall serve without salary or compensation, but may be reimbursed for actual and reasonable out-of-pocket expenses authorized by the Board of Directors.

**6.10 Committees.**

(a) The President shall appoint an Architectural Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the President shall appoint other committees as deemed appropriate or as directed by the Board of Directors.

(b) It shall be the duty of each committee to receive requests from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such requests as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

(c) Members of the committees shall be indemnified for any act they may perform upon behalf of the Association in the same manner herein provided for indemnification of members of the Board of Directors.

**ARTICLE 7**

## **INDEMNIFICATION LIABILITY**

**7.01** The Association shall indemnify any director or officer or former director or officer of the Association against reasonable expenses, costs and attorneys' fees actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer. The indemnification may include any amounts paid to satisfy a judgment or to compromise or settle a claim. The director or officer shall not be indemnified if he shall be adjudged to be liable on the basis that he has breached or failed to perform the duties of his office and the breach or failure to perform constitutes willful misconduct or recklessness. Advance indemnification may be allowed of a director or officer for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding provided that the director or officer must reimburse the Association if it is subsequently determined that the director or officer was not entitled to indemnification. The Association may make any other indemnification as authorized in the Bylaws or by a resolution adopted after notice to the Members entitled to vote. No Director or other shall be personally liable with respect to any contract made by them on behalf of the Association. The foregoing rights shall not be exclusive of other rights to which such director or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as Common Expenses. Nothing contained in this section shall, however, be deemed to obligate the Association to indemnify any Owner who is or has been a director or officer of the Association with respect to any duties or obligations assumed or liabilities incurred as an Owner under or by virtue of the Declaration, or his ownership of a Lot, as distinguished from his conduct and activities as an officer or director of the Association.

**7.02 Non-Liability of the Directors and Officers.** No director or officer of the Association shall be personally liable to the Members of the Association for any mistake of judgment or for any acts or omissions of any nature whatsoever as such director or officer, except for any acts or omissions found by a court to constitute actual negligence or misconduct. No director or officer shall be personally liable with respect to any contract made by them on behalf of the Association.

**7.03 Liability of Owners.** The liability of any Owner arising out of any contract made by the officers or Board of Directors, or out of the aforesaid indemnity in favor of the members of the Board of Directors or officers, or for damages as a result of injuries arising in connection with the Common Area solely by virtue of his ownership of an undivided percentage interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by such undivided percentage interest. Every agreement made by the officers, the Board of Directors or managing agent on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the managing agent, as the case may be, are acting only as agents for the Association and shall

have no personal liability hereunder (except as owners), and that each owner's liability hereunder shall be limited to the total liability hereunder multiplied by his undivided percentage interest.

**7.04 Non-Liability of Association.** The Association shall not be liable for any failure to provide services unless such failure amounts to gross negligence or wrongful intent. The Association shall not be liable to any Lot owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Lots. No diminution or abatement of any assessments, as may be provided in the Declaration or these Bylaws, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Shared Water Systems, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any municipal or other government authority.

**ARTICLE 8**  
**MORTGAGES**

**8.01 Notice to Association.** An Owner who mortgages his Lot shall notify the Association through the managing agent, if any, or the Secretary of the Association, giving the name and address of his Mortgagee. The Association shall maintain such information.

**8.02 Notice of Unpaid Assessments.** The Association shall, at the request of the Mortgagee of a Lot, report any unpaid assessment due from the Owner of such Lot upon the payment of such reasonable charge as may be determined by the Board.

**ARTICLE 9**  
**EVIDENCE OF OWNERSHIP AND**  
**REGISTRATION OF MAILING ADDRESS**

**9.01 Proof of Ownership.** Except for those owners who initially purchase a Lot from Declarant, any person on becoming an owner of a Lot shall furnish to the managing agent or the Secretary of the Board of Directors, a photocopy or a certified copy of the recorded instrument vesting that person with an interest or ownership, which instrument shall remain in the files of the Association. Such person shall neither be deemed to be a Member of the Association in good standing nor shall be entitled to vote at any annual or special meeting of the Members of the Association unless the requirement is first met.

**9.02 Registration by Owner of Mailing Address.** Each owner shall register his then current mailing address with the Association upon becoming an owner of a Lot and shall immediately advise the Association of any change in mailing address thereafter. Except for regular periodic assessment statements, notices of annual and special meetings as provided in the Bylaws, and other routine notices, all other notices or demands intended to be served upon an owner shall be sent by certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register his address or change of address with the Association in accordance herewith, the Association shall not be responsible for the non-deliverance of said statements, notices or demands. All notices, demands or other notices intended to be served upon the board or the Association shall be sent certified mail, postage prepaid to Bluestream Association, 333 Rio Rancho Drive NE, Rio Rancho, New Mexico, 87124, 75225 until such address is changed by a notice of address change duly recorded in the office of the County Clerk of Colfax County, New Mexico. All notices demands, statements or other information shall be deemed furnished and delivered upon deposit thereof in the U.S. mail, postage or charges prepaid, certified, return receipt requested and addressed to the party in accordance with this subparagraph, and in any event, upon actual receipt by such party.

**ARTICLE 10**  
**CONTRACTS, SIGNATORIES, ETC.**

**10.01 Contracts.** The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officer so authorized by these Bylaws, to enter

into any contract or execute and deliver any instrument in the name of and on behalf of this Association. Such authority shall be confined to specific instances.

**10.02 Checks and Drafts, Etc.** All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association shall be signed by such officer( s) or agent( s) of the Association and in such manner as from time to time shall be determined by written resolution of the Board of Directors.

**10.03 Deposits.** All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, financial institutions or other depositories as the Board of Directors may select.

## **ARTICLE 11** **BOOKS, RECORDS AND INSPECTION THEREOF**

**11.01 Maintenance.** The Association shall keep correct and complete books and records of account and shall also keep minutes of the meetings of the Members of the Association, and of the Board of Directors, and shall keep, at the registered or principal office, a record giving the names and addresses of all Members of the Association. All books and records of the Association shall be open for inspection by any Member, owner or holder of a bona fide lien of record against any Lot Ownership, or any representative of either, duly authorized in writing, at such reasonable time or times as may be requested by such member, Owner, lien holder or representative.

## **ARTICLE 12** **FISCAL YEAR**

**12.01** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the day of incorporation.

## **ARTICLE 13** **WAIVER OF NOTICE**

**13.01** Whenever any notice whatever is required to be given under the provisions of the laws of the State of New Mexico or under their provisions of the Declaration, Articles of Incorporation or by these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**ARTICLE 14**  
**ASSESSMENTS**

**14.01 Mutual Covenants.** Declarant, as owner of the Subdivision, covenants, and each Owner, by acceptance of a deed to a Lot, covenants and agrees with each other owner and with the Association, to pay all assessments levied by the Board, as required in this Declaration whether or not such covenant is contained in such deed. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in 'the Property and, in particular, for the improvement and maintenance of the Property, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Areas.

**14.02 Creation of Common Expense Fund.** The Board shall establish a "Common Expense Fund" to enable the Association and the Board to exercise the powers and perform the rights, obligations and duties stated herein. Such fund shall be funded by assessments as hereinafter provided, to be paid by all Owners, including Declarant; provided, however' until the Association makes an assessment for the Common Expenses, Declarant shall pay all Common Expenses. Such fund shall be administered on a fiscal year basis. The first assessment shall be determined by the Board in accordance with the Declaration and these Bylaws of the Association and shall be prorated over the Association's fiscal year commencing with the date set by the Board for the first assessment.

**14.03 Annual Budget.** Each year, after the first year and at least seventy-five (75) days prior to the end of the Association's current fiscal year, the Board shall prepare and adopt a proposed estimate of the total amount it deems necessary (hereinafter referred to as "Annual Budget") to pay the Common Area expenses to be incurred for the Association's next fiscal year. Within thirty (30) days after such adoption of the Annual Budget, and subject to Paragraph 4.05 of Article 4 hereof, the Board shall furnish each owner an itemized copy thereof, together with notification of the date, time and place of the Association's annual meeting at which meeting the Owners will consider ratification of the Annual Budget. The Annual Budget shall be deemed ratified unless owners having fifty-one percent (51 %) of the voting power of the Association reject the Annual Budget at the annual meeting, regardless of whether or not a quorum is present at the annual meeting. Without a confirming vote of fifty one percent (51 %) of the voting members of the Association, the maximum annual assessment may be increased each year not more than that percentage above the maximum assessment, (exclusive of special assessments for capital improvements) for the previous year which is reflected in the Consumer Price Index as published by the United States Department of Labor or successor indices for the Colfax County, New Mexico areas, as adjusted, plus two percent (2%). The Board of Directors may fix the annual assessment at an amount not in excess of the adjusted maximum and may raise or lower said assessment within the maximum amount as they deem necessary in their discretion, subject to the restrictions of this Paragraph. The Annual Budget shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or Board shall from time to time determine is to be paid by all of the Owners including Declarant, to provide for the payment of all estimated Common Area expenses which sum may include, among. other things, expenses of management, premiums for all insurance,

landscaping and care of grounds including trails and Common Area; payment of property tax on common open space; drainage; common lighting; legal and accounting fees; management fees; expenses and liabilities incurred by the managing agent or Board under or by reason of the Declaration; for any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the Association's affairs and duties.

**14.04 Assessments.** Effective the first day of each such fiscal year after the first assessment made by the Association, each owner, including Declarant, if it is then an Owner, shall be assessed a sum equal to the percentage of Lot ownership that each Lot bears to the total Lots in the Property multiplied by the Annual Budget, which sum shall be paid by the owner in quarterly installments or as established by the Board, on the first day of each of the quarters of each fiscal year, and continuing until a new assessment is made by the Board. The managing agent or Board shall prepare and deliver or mail to each owner an itemized semi-annual statement showing the various estimated or actual expenses for which the assessments are made and which vary from the itemized Annual Budget ratified by the Owners Contributions for quarterly assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of a quarter. The omission or failure of the managing agent or Board to fix the assessment for any quarter shall not be deemed a waiver, modification or a release of the owners from their obligations to pay the assessment for that period. If the amount of the Annual Budget proves inadequate for any reason including, without limitation, non-payment of any Owner's assessment, the Board may at any time, upon a fifty one percent (51%) confirming vote of the members of the Association, levy a further assessment by increasing the Annual Budget and each Owner shall be assessed a sum equal to his percentage of ownership as determined above multiplied by such increase, provided, however, extraordinary expenses omitted from the Annual Budget, which may become due during the fiscal year, shall first be paid from the replacement and contingency reserve; and provided further, if inadequate funds exist during a fiscal year, the Association may borrow sufficient funds with ratification of the Members, from Declarant or otherwise, but Declarant shall not be obligated to loan any funds to the Association. The Board shall give written notice of any such increase and reasons therefor, to each Owner, and shall state the date and terms of payment of such increase. All such assessments collected shall be paid and expended for the purposes authorized herein, and (except for such special assessments as may be levied against less than all the owners and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all Owners in the same percentages as their percentage ownership of the total Subdivision Lots. Notwithstanding any other provision contained herein, no Owner shall have the right to demand that more than his pro rat a share of the assessments collected be used to benefit his Lot.

**14.05 Special Assessment for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Area and other property owned by the Association, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty six percent (66%) of the

votes of the Members in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the date, place and the purpose of the meeting.

**14.06 Special Expenses.** In the event any of the easements, Common Area improvements, property, utilities, or signage are damaged in any way through the intentional or negligent act or omission of any owner or his agents, employees, or invitees, the expense incurred by the Association for the repair of such damage shall be deemed a Special Expense. Such Special Expense shall be levied by the Board and assessed only to the owner whose act or omission resulted in the aforementioned damage, and shall be paid by the owner together with his next quarterly assessment due the Association.

**14.07 Annual Accounting.** Together with the notice of the annual meeting of Members, the Board shall furnish to all Owners, for the preceding fiscal year, an itemized accounting of all the Common Expenses actually incurred, paid or accrued, together with a statement of the total assessments collected, showing the net operating loss or gain. Any such gain, in excess of the amount required for incurred or accrued expenses and replacement and contingency reserves, shall be apportioned according to each Owner's percentage of ownership in the total Subdivision Lots as a credit against the next quarterly assessment(s), until exhausted; any such loss shall be apportioned according to each Lot Owner's percentage of ownership in the total Subdivision Lots, and added one-half (1/2) to each or the next two (2) quarterly assessments.

**14.08 Books of Account.** The Board shall maintain current, detailed books of account in accordance with generally accepted accounting principles and procedures, which reflect all receipts, disbursements, assets and liabilities of the Association. Such books, records, purchase orders and payment vouchers shall be available for inspection by any Owner, or duly authorized representative of any Owner, including owner's mortgagee, at reasonable times during normal weekday business hours. Upon ten (10) days' notice to the Board and payment of a reasonable fee established by the Board, any Owner or his Mortgagee(s) may demand and be furnished a statement of his account reflecting the amount of any unpaid assessments or other charges due and owing from such Owner.

**14.09 Lien for Non-Payment of Common and/or Special Expenses.** All sums assessed by the Association, but unpaid, for each Lot's share of Common Expenses, including, without limitation, any assessment for Special Assessments, Special Expenses, violations of the Declaration, these Bylaws, or Regulations of the Association, chargeable to any Lot or its Owner shall constitute a lien on such Lot. If any assessment shall remain unpaid for thirty (30) days after the due date thereof, the Board or managing agent shall assess interest thereon at a rate equal to eighteen percent (18%) per annum but not to exceed the maximum rate allowed by law, commencing on the date such assessment was due, together with reasonable costs and attorneys' fees incurred in connection with the collection thereof. In any foreclosure of such lien the owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorneys' fees. The owner shall also be required to pay to the Association any assessment due for the Lot

during the period of foreclosure. The managing agent or Board shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the same. Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common and/or Special expenses due with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot of the same rank as the lien of his encumbrance for the amounts paid. The Association shall give notice to the Lot Owner and the mortgagee(s) of a Lot, if such mortgagee is duly registered with the Association, for any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.

**14.10 Personal Debt of Owner.** The amount of the Common and/or Special expenses assessed against each Lot shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common and/or Special Expenses shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid Common and/or Special Expenses from a person in possession of a Lot pursuant to real estate installment sale contract for a period of thirty (30) days following notice to such person of unpaid Common and/or Special Expenses before seeking such sums from the legal Owner of such Lot.

**14.11 Disclosure of Unpaid Assessments.** Upon payment of a reasonable fee established by the Board, and upon the board's receipt of a written request from any Owner or any Mortgagee or prospective Mortgagee of a Lot, the Association, by its managing agent or Board, shall issue an acknowledged, recordable written statement in accordance with the provisions of 47-7C-16G, N.M.S.A. 1978, setting forth the amount of the unpaid Common and/or Special Expenses, or any, with respect to the subject Lot, that amount of the current quarterly assessment and the date that such assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be compiled within ten (10) business days of its actual receipt by the Association, all unpaid common and/or Special Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement. The owner of any Lot, by acceptance of a deed thereto, waives any objection to the disclosure of the aforementioned information by the Association and releases the Association, the Board and its agents from any liability there for.

**14.12 Joint Liability for Common and/or Special Expenses Upon Transfer of Lot.** The grantee of a lot shall be jointly and severally liable with the prior owner for all unpaid assessments against the latter for his proportionate share of the common and/or Special expenses up to the time of the grant or conveyance, without prejudice to the grantee's right recover from the Declarant the amounts paid by the grantee therefore; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the managing agent or Board setting forth the amount of the unpaid assessments, if any, with respect to the subject Lot, the amount of the current quarterly assessment, the date that such assessment becomes

due, and the credits for advanced payments or for prepaid items including, but not limited to, insurance premiums, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within fifteen (15) business days of its actual receipt of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for any unpaid assessments against the subject Lot unless such lien has been recorded with the Colfax County Clerk prior to the date the request is received by the Association.

**14.13 No Waiver of Common and/or Special Expenses.** No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the easements or his Lot, by abandonment of his Lot or by any other means whatsoever.

**14.14 Liability of Owners.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments, which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessment which is not paid when due shall be deemed delinquent. The Association may bring action at law against the pertinent Lot, and interest, costs and reasonable attorneys' fees for any such action shall be added to the amount of such assessment. A suit to recover a money judgment for unpaid expenses hereto shall be maintainable without foreclosing or waiving the lien security the same. All of the above shall be done in total compliance with the requirements set forth in the Declaration.

**14.15 Subordination of the Lien to Mortgages.** Any lien of the assessments as provided for herein shall be subordinated to the lien of any mortgage or mortgagees now or hereafter placed upon the properties subject to assessment.

**14.16 Exempt Property.** The following property subject to the Declaration shall be exempt from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated to and accepted by the local public authority for maintenance; (b) all Lots held by the Declarant.

**14.17 Collection of Assessments.**

**14.17.1** The Board of Directors shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than thirty (30) day from the due date for payment thereof. In the event of a default by any Owner in payment of any installment of the Annual Assessment which default continues for thirty (30) days the Board shall notify the Owner of the default amount and interest due.

**14.17.2** If said default continues for an additional thirty (30) days the Board may institute legal proceedings to collect any such assessment due together with interest, costs of collection and attorney's fees and to foreclose the assessment lien against the defaulting Owner's Lot.

**14.17.3** The lien for assessment may be enforced and foreclosed in the manner provided by the laws of New Mexico by action in the name of the Board of Directors. The

Association shall have the right to the appointment of the receiver, if available under the laws of the State of New Mexico.

**14.17.4** A suit to recover a money judgement for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgement.

## **ARTICLE 15** **CORPORATE SEAL**

**15.1 Corporate Seal.** The Association is not required to have a corporate seal. The absence of a seal from any documents to be executed in behalf of said Association shall not affect the validity of such documents.

## **ARTICLE 16** **CHARACTER OF ASSOCIATION**

**16.1 Nonprofit Association.** This Association is not organized for profit. No Member, member of the Board of Directors or officer may receive pecuniary gain from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of any Member, member of the Board of Directors or officer; provided, however, (1) that reasonable compensation may be paid to any Member, director, or officer while acting as an agent or employee of the Association for service rendered in effecting one or more of the purposes of the Association, and (2) that any Member, director or officer may, from time to time, be reimbursed for this actual and reasonable expenses incurred in connection with the administration of the affairs of the Association; all in accordance with the provisions of applicable conditions contained herein.

## **ARTICLE 17** **AMENDMENT TO BYLAWS**

**17.1 Bylaws.** These Bylaws may be amended at a regular or special meeting of the Members by a vote of a sixty-seven percent (67%) majority of a quorum of Members present, in person or by proxy, provided, however, that the power to amend aforesaid shall not authorize any amendment altering the right of each Lot Owner to membership in the Association with rights appurtenant thereto.

**17.2 Conflict in Interpretation.** In the case of any conflict between the Articles of Incorporation and/or these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE 18**  
**DISSOLUTION**

**18.1 Dissolution.** The Association may be dissolved with the assent given in writing and signed by not less than seventy-five percent (75%) of the vote of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an entity organized and operated for a purpose set forth in Section 501 (c) (3) of the Internal Revenue Code.

