

AMENDED AND COMPLETELY RESTATED BYLAWS

of the

NATURE POINTE HOMEOWNERS ASSOCIATION, INC.,
a New Mexico non-profit corporation

(Adopted on March 26th, 2016)

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Article 1
Name, Principal Office, and Definitions

1.1 **Name.** The name of the Association shall be Nature Pointe Homeowners Association, Inc., a New Mexico non-profit corporation (hereinafter sometimes referred to as the “Association”).

1.2 **Principal Office.** The principal office of the Association in the State of New Mexico shall be located in Bernalillo County. The Association may have such other offices, either within or outside the State of New Mexico, as the Board of Directors may determine or as the affairs of the Association may require.

1.3 **Definitions.** The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain *Declaration of Covenants, Conditions and Restrictions for Nature Pointe Community* filed in the Office of the County Clerk of Bernalillo County on February 15, 2006 as Document No. 2006022131, in Book A112, Page 2041, as amended by Amendment No. 1 filed in the Office of the County Clerk of Bernalillo County on April 26, 2013 at Document No. 2013045548 and as amended by Amendment No. 2 filed in the Office of the County Clerk of Bernalillo County on September 19, 2014 at Document No. 2014074027 (collectively, “**Declaration**”), unless the context indicates otherwise.

Article 2
Association Membership, Voting, Meetings, Quorum, Proxies

2.1 **Membership.** Every Owner of a Lot in Nature Pointe shall be a member of the Association. If there are two (2) Owners, both shall be members of the Association. There shall be two (2) votes on matters coming before the Association for each Lot. If a Lot is owned by two (2) persons, one (1) of those Owners may be designated to cast both votes for such Lot by written designation signed by the other Owner and filed with the Board of Directors of the Association. If a Lot is owned by more than two (2) persons, the Owners thereof shall designate two (2) of such Owners to be members of the Association for the purpose of exercising the privileges of voting. Such designation shall be subject to reasonable Board regulations and restrictions on voting. All such Owners shall be jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised only by an officer, director, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

2.2 **Voting.** The Association shall have two (2) classes of membership, Class A and Class B.

2.2.1 *Class A.* Class A members shall be all Owners except the Class B member. Class A members shall have the right to vote for each Lot in which they hold the interest required for membership under Section 2.1. Owners are limited to two (2) votes per Lot.

2.2.2 *Class B.* The sole Class B member shall be Vista del Oro, LLC, a New Mexico limited liability company, which shall represent all Lots not yet sold to a builder or other third-party purchaser. The rights of the Class B member, including the right to approve or withhold approval of actions proposed under the Declaration and these Bylaws, are specified elsewhere in the Declaration and these Bylaws. The Class B member may appoint the members of the Board during the Class B Control Period, as specified in Section 3.1.3. After termination of the Class B Control Period, the Class B member shall have a right to disapprove actions of the Board and committees as provided in Section 3.3.3.

The Class B membership shall terminate upon the earlier of:

- i. two (2) years after termination of the Class B Control Period pursuant to Section 3.1(c); or
- ii. when, in its discretion, Vista del Oro, LLC so determines and declares in an instrument recorded in the real property records of Bernalillo County.

2.2.3 *Exercise of Voting Rights.* Each Class A member shall cast its vote(s) for the Lot(s) that such Nature Pointe member owns.

Only those persons designated as “Owners” of a Lot (and then not more than two [2] such Owners) shall register their names as members with the Association. Upon registration, the member(s) shall designate one and only one address for purposes of notice from the Association.

2.3 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board.

2.4 **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Association’s fiscal year on a date and at a time set by the Board.

2.5 **Special Meetings.** The President or any three (3) Board members may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by members representing at least twenty-five percent (25%) of the total Class A votes of the Association.

2.6 **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the members shall be delivered, either personally, by United States mail, by reputable overnight carrier providing proof of delivery or by email to the email address on file with the Association for each member, to each member entitled to vote at such meeting, not less than ten (10)

nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary of the Association or the officers or persons calling the meeting. Notices shall be given at the address designated in accordance with Section 2.2.

In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at such member's address as it appears on the records of the Association, with postage prepaid. For purposes of notice, the Association may use the member registration as it exists on a date which is not more than five (5) business days before the date of the notice.

2.7 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.8 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to members in the manner prescribed for regular meetings.

2.9 Voting. Members may vote in person, by absentee ballot or by proxy. No proxy shall be valid unless signed by the Owner or Owner's duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to any meeting for which it is to be effective. All voting by proxy shall comply with NMSA 1978, § 47-16-9(B). Notwithstanding the foregoing, if two (2) individuals have been designated as members for one (1) Lot and if only one (1) such member is present at a meeting, such member shall be deemed to have a proxy from the absent member.

Absentee voting shall be on ballots provided to Lot Owners in the same manner as permitted for giving notice of any meeting. Absentee ballots may be returned by United States Mail, reputable overnight carrier providing proof of delivery, facsimile (if a facsimile machine is maintained by the Association) or by email. To be counted, each absentee ballot must be fully completed and signed in accordance with voting instructions provided by the Board and must be

received by the Association not less than twenty-four (24) hours prior to the scheduled commencement time for any meeting.

Voting by members at a meeting shall be by secret ballot. Votes for any contested election shall be counted by an independent certified public accountant designated by the Board for that purpose. The certified public accountant shall count all votes and provide the voting results, specifying the total votes cast, the number of votes for the proposition and the number of votes against the proposition. In no event shall the certified public accountant be required to disclose the names of the members voting. After the voting is complete and thirty (30) days have elapsed, the certified public accountant shall destroy the ballots.

2.10 **Majority.** As used in these Bylaws, the term “majority” shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

2.11 **Quorum.** Except as otherwise provided in these Bylaws or in the Declaration, the presence of the members representing a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association. Votes cast by proxy and absentee ballot shall be included for purposes of determining a quorum.

2.12 **Conduct of Meetings.** The President shall preside over all meetings of the Association and the 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 at the meeting.

2.13 **Action Without A Meeting.** Any action required or permitted by law to be taken at a meeting of the members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by members holding at least the minimum number of votes necessary to authorize such action at a meeting if all members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of New Mexico. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a unanimous vote of the members.

Article 3

Board of Directors: Number, Powers and Meetings

3.1 Composition and Selection.

3.1.1 *Governing Body: Composition.* The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class B member, the directors shall be members; provided, however, not more than one (1) person representing a single Lot may serve on the Board at the same time. In the case of a member which is not a natural person, any officer, director, partner or trust officer of such member shall be eligible to serve as a director unless otherwise specified by written notice

to the Association signed by such member; provided, no member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by the Class B member.

3.1.2 *Number of Directors.* The number of directors in the Association shall not be less than three (3) nor more than seven (7), as provided in Section 3.1.5 below. The initial Board shall consist of three (3) directors as identified in the Articles of Incorporation.

3.1.3 *Directors During Class B Control Period.* Subject to the provisions of Section 3.1.5 below, the directors shall be selected by the Class B member acting in its sole discretion and shall serve at the pleasure of the Class B member until the first to occur of the following, which shall also be deemed the termination of the Class B Control Period:

- i. when 90% of the total number of Lots in Nature Pointe have been conveyed to a person(s) other than builders;
- ii. thirty (30) years after the date on which the Declaration is recorded in the Office of the County Clerk of Bernalillo County, New Mexico; or
- iii. when, in its discretion, the Class B member so determines.

3.1.4 *Nomination of Directors.* Except with respect to directors selected by the Class B member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and three (3) or more members or representatives of members. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for elections to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.1.5 below. Nominations for each slate shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.1.5 *Election and Term of Office.* Notwithstanding any provision of these Bylaws:

- i. Within thirty (30) days after the time that Class A members other than builders own twenty-five percent (25%) of the Lots, or whenever the Class B member earlier determines, the President shall call a special meeting at which members representing the Class A members shall be entitled to elect one (1) director, who shall be an at-large director. The remaining directors shall be appointees of the Class B member. The director elected by the members shall not be subject to removal by the Class B member and shall be elected for a term of two (2) years or until the happening of the event described in subsection (ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (ii) below, a successor shall be elected for a like term.

ii. Within thirty (30) days after the time that Class A members other than builders own fifty percent (50%) of the Lots, or whenever the Class B member earlier determines, the Board shall automatically be expanded to five (5) members and the President shall call a special meeting at which members representing the Class A members shall be entitled to elect three (3) directors, who shall serve as at-large directors. The remaining directors shall be appointees of the Class B member. The directors elected by the members shall not be subject to removal by the Class B member and shall be elected for a term of two (2) years or until the happening of the event described in subsection (iii) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (iii) below, successors shall be elected for a like term.

iii. Within ninety (90) days after termination of the Class B Control Period, the President shall call a special meeting at which voting members representing the Class A members shall be entitled to elect three (3) directors, who shall serve as at-large directors. The remaining directors shall be appointees of the Class B member. The directors elected by the members shall not be subject to removal by the Class B member and shall serve until the first annual meeting following the termination of the Class B Control Period. If such annual meeting is scheduled to occur within ninety (90) days after termination of the Class B Control period, this subsection shall not apply and directors shall be elected in accordance with subsection (iv) below.

iv. At the first annual meeting of the membership after the termination of the Class B Control Period, the Board shall be increased to seven directors who shall be selected as follows: six (6) directors shall be elected by the members representing the Class A members. Three (3) directors shall serve a term of two (2) years and three (3) directors shall serve a term of one (1) year, as such directors determine among themselves. Upon the expiration of each director's term of office, the members entitled to elect such director shall be entitled to elect a successor to serve a term of two (2) years.

Until termination of the Class B membership, the Class B member shall be entitled to appoint not less than one (1) director. Upon termination of the Class B membership, the director elected by the Class B member shall resign and the remaining directors shall be entitled to appoint a director to serve the unexpired portion of the term. Thereafter, the members shall be entitled to elect a successor to fill such position.

There shall be no cumulative voting. The candidate(s) receiving the most votes shall be elected. The directors elected by the members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

3.1.6 *Removal of Directors and Vacancies.* Any director elected by the members may be removed, with or without cause, by the vote of members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the members who has three (3) consecutive, unexcused absences from Board meetings or who is more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor shall be appointed by the Board to fill the vacancy for the remainder of the term.

In the event of the death, disability or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the members entitled to fill such directorship may elect a successor for the remainder of the term.

3.2 **Meetings.**

3.2.1 *Organizational Meetings.* The first meeting of the Board shall be held within ten (10) days after filing the Articles of Incorporation at such time and place the Board shall fix.

3.2.2 *Regular Meetings.* Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.2.3 *Special Meetings.* Special meetings of the Board shall be held when called by written notice signed by the President or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) business days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

3.2.4 *Waiver of Notice.* The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.2.5 *Quorum of Board of Directors.* At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, any business which might have been transacted at the meeting originally called may be transacted without further notice. Directors may not vote by proxy or absentee ballot.

3.2.6 *Compensation.* No director shall receive any compensation from the Association for acting as such unless approved by members representing a majority of the total Class A votes at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.2.7 *Conduct of Meetings.* The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings. Meetings of the Board or any committee may be held by telephone. Any member of the Board or committee of the Board may participate in a meeting of the Board or a committee of the Board by means of a conference, telephone or similar communication equipment so that all persons participating in the meeting can hear each other at the same time.

3.2.8 *Open Meetings.* Subject to the provisions of Section 3.2.9 below, all meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.2.9 *Action Without A Formal Meeting.* Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by seventy-five percent (75%) of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.3 **Powers and Duties.**

3.3.1 *Powers.* The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these Bylaws, the Articles and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these Bylaws, or New Mexico law directed to be done and exercised exclusively by the members or the membership generally.

3.3.2 *Duties.* The duties of the Board shall include, without limitation:

- i. preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses;
- ii. levying and collecting assessments from the Owners to fund the Common Expenses or providing for collection thereof by the Association;
- iii. providing for the operation, care, upkeep and maintenance of the Common Area;
- iv. designating, hiring and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;
- v. depositing all funds received on behalf of the Association in a bank depository which it shall approve or with the Association, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- vi. making and amending rules and regulations;
- vii. opening of bank accounts on behalf of the Association and designating the signatories required;
- viii. making or contracting for the making of repairs, additions and improvements to or alterations of the Common Areas in accordance with the Declaration and these Bylaws;
- ix. enforcing by legal means the provisions of the Declaration, these Bylaws and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

x. obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

xi. paying the cost of all services rendered to the Association or its members and not chargeable directly to specific Owners;

xii. keeping books with detailed accounts of the receipts and expenditures of the Association;

xiii. making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration, the Articles, these Bylaws, rules and all other books, records and financial statements of the Association;

xiv. permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Properties;

xv. indemnifying a director, officer or committee member, or former director, officer or committee member of the Association in accordance with NMSA 1978, §53-8-26, and in accordance with the Articles and the Declaration;

xvi. assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.3.3 Right of Class B member to Disapprove Actions. So long as the Class B membership exists, the Class B member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Class B member, would tend to impair rights of the Class B member or Builders under the Declaration or these Bylaws, or interfere with development, construction or sale of any portion of the property, or diminish the level of services being provided by the Association. Provided, however, the Class B member shall not veto any Board decision regarding wedding operational or wedding financial issues.

No such action, policy or program shall become effective or be implemented until and unless:

i. The Class B member shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meetings with Sections 3.2.2, 3.2.3 and 3.2.4 of these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

ii. The Class B member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class B member, its representatives or agents shall make its concerns, thoughts and suggestions known to the Board and/or the members of the subject committee. The Class B member shall have and is hereby granted a right to disapprove any such action, policy or program authorized by the Association, the Board or any committee thereof, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class B member, its successors, assigns, representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions, but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class B member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.3.4 *Management.* The Board of Directors may employ a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.3.2.i and 3.3.2.ix. The Association, the Class B member, or an affiliate thereof, may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class B Control Period unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the Class B Control Period, upon not more than ninety (90) days written notice.

3.3.5 *Accounts and Reports.* The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- i. accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- ii. accounting and controls should conform to generally accepted accounting principles;
- iii. cash accounts of the Association shall not be commingled with any other accounts;

iv. no remuneration shall be accepted by the managing agent from vendors, independent contractors or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise; anything of value received shall benefit the Association;

v. any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

vi. commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(1) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(2) a statement reflecting all cash receipts and disbursements for the preceding period;

(3) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(4) a balance sheet as of the last day of the preceding period; and

(5) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent. (Any assessment or installment thereof shall be considered to be delinquent on the fifteenth day following the due date unless otherwise specified by resolution of the Board.

vii. an annual report consisting of at least the following shall be made available to all members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent certified public accountant; provided, upon written request of any holder, guarantor or insurer of any first mortgage on a Lot, the Association shall provide an audited financial statement.

3.3.6 *Borrowing.* The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain member approval in the same manner provided in Section 3.2.6 if the proposed borrowing is for the purpose of making discretionary capital improvements and total amount of such borrowing, together with all other debt incurred within the previous twelve-month period, exceeds or would exceed twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year.

3.3.7 *Rights of the Association.* The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include,

without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, both within and outside the Property. Such agreements shall require the consent of a majority of the total number of directors of the Association.

3.3.8 *Enforcement.* In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Lot of the violator, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided however, nothing herein shall authorize the Board to limit ingress and egress to or from a Lot or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Lot violates the Declaration, Bylaws or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

i. *Notice.* Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing: (1) the nature of the alleged violation; (2) the proposed sanction to be imposed; (3) a period of not less than ten (10) days within which the alleged violator may present a written request for a hearing to the Board; and (4) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is made within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided the Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

ii. *Hearing.* If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

iii. *Appeal.* Following a hearing before the Board, the violator shall have the right to appeal the decision to the District Court using the standards for appeal prescribed by the New Mexico Arbitration Act.

iv. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provisions of the Declaration, these Bylaws or the rules of the Association by self help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in Sections 5.11 and 7.13 of the Declaration, by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

Article 4 **Officers**

4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President, Vice President, Secretary and Treasurer shall be elected from among the members of the Board. The Board may appoint such other officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Such other officers may, but need not be members of the Board. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

4.2 **Election and Term of Office.** The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members as set forth in Article 3.

4.3 **Removal and Vacancies.** Any officer may be removed by the Board of directors whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.4 **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 **Resignation.** 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 the 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.

4.6 **Agreements, Contracts, Deeds, Leases, Checks, etc.** All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board.

4.7 **Compensation**. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.2.6.

Article 5 **Committees**

5.1 **General**. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 **Covenants Committee**. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a covenants Committee consisting of at least three and no more than seven members. Acting in accordance with the provisions of the Declaration, these Bylaws and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.3.8.

Article 6 **Miscellaneous**

6.1 **Fiscal Year**. The fiscal year of the Association shall be set by resolution of the Board. In the absence of a resolution, the fiscal year shall be the calendar.

6.2 **Parliamentary Rules**. Except as may be modified by Board resolution, *Robert's Rules of Order* (then current edition) shall govern the conduct of Association proceedings when not in conflict with New Mexico law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 **Conflicts**. If there are conflicts between the provisions of New Mexico law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of New Mexico law, the Declaration, the Articles of Incorporation and these Bylaws (in that order) shall prevail.

6.4 **Books and Records**.

6.4.1 *Inspection by Members and Mortgagees*. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first mortgage on a Lot, any member, or the duly appointed representative of any of the foregoing, at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, these Bylaws, the Articles of Incorporation, any amendments to the foregoing, the rules of the association, the membership register, books of account and the minutes of meetings of the members, the Board and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Property as the Board shall designate.

6.4.2 *Rules for Inspection*. The Board shall establish reasonable rules with respect to:

- and
- i. notice to be given to the custodian of the records;
 - ii. hours and days of the week when such an inspection may be made;
 - iii. payment of the cost of reproducing copies of documents requested.

6.4.3 *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expenses of the Association.

6.5 **Notices.** Unless otherwise provided in these Bylaws, all notice, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

6.5.1 if to a member, at the address which the member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such member; or

6.5.2 if to the Association, the Board or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the members pursuant to this Section.

6.6 **Amendment.**

6.6.1 *Approval.* Any amendment to these Bylaws must be approved by the Declarant so long as the Class B membership has not been terminated. After the Class B membership has terminated, any such amendment to these Bylaws must be approved by the Association.

6.6.2 *By Class B Member.* Until termination of the Class B Control Period and subject to the provisions of Section 6.6.1, the Class B member may unilaterally amend these Bylaws for any purpose. Thereafter, the Class B member may unilaterally amend these Bylaws if such amendment is: (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage corporation, to enable it to make, purchase, insure, or guarantee Mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing.

6.6.3 *By Members Generally.* Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of members representing seventy-five percent (75%) of the total Class A votes in the Association, including seventy-five percent (75%) of the Class A votes held by members other than the Class B members, and the consent of the Class B member, if such exists. In addition, the approval requirements set forth in Article 7 of the Declaration shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

6.6.4 *Validity and Effective Date of Amendments.* Amendments to these Bylaws shall become effective upon recordation in the Office of the County Clerk of Bernalillo County, New Mexico, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

If an Owner consents to any amendment to these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Class B member without the written consent of the Class B member or the assignee of such right or privilege.

IN WITNESS WHEREOF, the undersigned officer of Nature Pointe Homeowners Association, Inc. has set her hand this 26th day of March, 2016.

NATURE POINTE HOMEOWNERS ASSOCIATION, INC.,
a New Mexico non-profit corporation

Suki Tingey
Suki Tingey, Secretary

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Nature Pointe Homeowners Association, Inc., a New Mexico non-profit corporation;

That the foregoing Bylaws constitute the Amended and Completely Restated Bylaws of said Association, as duly adopted by the Class B member on the 26 day of March, 2016.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of March, 2016.

Suki Tingey
Suki Tingey, Secretary

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