

97099130

2457

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR TIERRA VIVA SUBDIVISION, A SUBDIVISION IN  
THE CITY OF ALBUQUERQUE  
BERNALILLO COUNTY  
STATE OF NEW MEXICO

## TABLE OF CONTENTS

RECITALS		1
ARTICLE 1		2
<u>Definitions</u>		2
<u>Section 1.01:</u>	<u>Association</u>	2
<u>Section 1.02:</u>	<u>Board</u>	2
<u>Section 1.03:</u>	<u>City</u>	2
<u>Section 1.04:</u>	<u>Eligible Mortgagee</u>	2
<u>Section 1.05:</u>	<u>Fiscal Year</u>	2
<u>Section 1.06:</u>	<u>Improvements</u>	3
<u>Section 1.07:</u>	<u>Lot</u>	3
<u>Section 1.08:</u>	<u>Mortgage</u>	3
<u>Section 1.09:</u>	<u>Owner/Lot Owner</u>	3
<u>Section 1.10:</u>	<u>Plat</u>	3
<u>Section 1.11:</u>	<u>Subdivision</u>	3
<u>Section 1.12:</u>	<u>Subdivision Restrictions</u>	4
ARTICLE 2		4
<u>Property Subject to Subdivision Restrictions</u>		4
ARTICLE 3		4
<u>Permitted and Prohibited Uses of Property</u>		4
<u>Section 3.01:</u>	<u>Permitted Uses of Property Within the Subdivision</u>	4
<u>Section 3.02:</u>	<u>Compliance with Soils Report</u>	5
<u>Section 3.03:</u>	<u>Compliance with Drainage Plan and Private Facility</u>	5
	<u>Drainage Covenant</u>	5
<u>Section 3.04:</u>	<u>Landscaping</u>	6
<u>Section 3.05:</u>	<u>Alterations and Additions</u>	6
<u>Section 3.06:</u>	<u>Vehicles</u>	6
<u>Section 3.07:</u>	<u>Animals</u>	6
<u>Section 3.08:</u>	<u>Garbage and Rubbish</u>	6
<u>Section 3.09:</u>	<u>Air Conditioning, Compressors, Evaporative Coolers,</u>	7
	<u>Solar Units</u>	7
<u>Section 3.10:</u>	<u>Accessories</u>	7

<u>Section 3.11:</u>	<u>Easements</u>	7
<u>Section 3.12:</u>	<u>No Further Subdivisions</u>	7
<u>Section 3.13:</u>	<u>Fireworks</u>	8
<u>Section 3.14:</u>	<u>Noise</u>	8
<u>Section 3.15:</u>	<u>Solar Installation</u>	8
<u>Section 3.16:</u>	<u>Swimming Pools</u>	8
<u>Section 3.17:</u>	<u>Outside Lighting</u>	8
ARTICLE 4		9
	<u>Membership in the Association Voting Rights</u>	9
	<u>Section 4.01: Membership</u>	9
	<u>Section 4.02: Voting Rights</u>	9
	<u>Section 4.03: Voting Rules</u>	9
ARTICLE 5		10
	<u>Organization, Powers and Duties of the Association</u>	10
	<u>Section 5.01: Organization</u>	10
	<u>Section 5.02: Powers and Authority of the Association</u>	10
	<u>Section 5.03: Liability of Members of Board</u>	13
	<u>Section 5.04: Duties and Obligations of the Association</u>	13
ARTICLE 6		15
	<u>Funds, Assessments and Delinquency</u>	15
	<u>Section 6.01: Creation of Lien and Personal Obligation for Assessments</u>	15
	<u>Section 6.02: Operating Fund</u>	15
	<u>Section 6.03: Maintenance Assessment</u>	16
	<u>Section 6.04: Reserves as Trust Funds</u>	16
	<u>Section 6.05: Delinquency</u>	16
	<u>Section 6.06: Notice of Lien</u>	17
	<u>Section 6.07: Foreclosure Sale</u>	17
	<u>Section 6.08: Curing a Default</u>	17
	<u>Section 6.09: Cumulative Remedies</u>	18
	<u>Section 6.10: Certificate of Payment</u>	18
	<u>Section 6.111 Commencement of Annual Assessments</u>	18

ARTICLE 7 19

Duties and Responsibilities of Owners 19

Section 7.01: Observance of Subdivision Restrictions 19

ARTICLE 8 19

Construction and Architectural Control 19

Section 8.01: Architectural Control Committee 19

Section 8.02: Construction of Improvements 19

Section 8.03: Design Guidelines 21

Section 8.04: Estoppel Certificate 23

Section 8.05: Liability 24

ARTICLE 9 24

Protection of Security Interests 24

Section 9.01: Application of Assessments to Mortgagees 24

Section 9.02: Right to Notice 24

Section 9.03: Limitation of Enforcement Against Mortgagee 25

Section 9.04: Rights of Mortgagee to Information 25

Section 9.05: Application of Subdivision Restrictions 25

Section 9.06: Collection of Assessments 25

Section 9.07: Mortgage Approval 25

ARTICLE 10 26

Limitation of Subdivision Restrictions on Declarant 26

Section 10.01: Limitation of Subdivision Restrictions on Declarant 26

Section 10.02: Use of Subdivision Name 26

Section 10.03: Architectural Control 27

Section 10.04: No Amendment or Repeal 27

ARTICLE 11		27
<u>Miscellaneous Provisions</u>		27
<u>Section 11.01:</u>	<u>Amendment or Repeal: Duration</u>	27
<u>Section 11.02:</u>	<u>Enforcement; Non-Waiver; No Forfeiture</u>	28
<u>Section 11.03:</u>	<u>Construction; Compliance with Laws; Severability</u>	
	<u>Singular and Plural; Titles</u>	28
<u>Section 11.04:</u>	<u>Lot Splitting; Consolidation</u>	29
<u>Section 11.05:</u>	<u>Obligations of Owners; Avoidance; Termination</u>	29
<u>Section 11.06:</u>	<u>No Partition or Severance of Interests</u>	30
<u>Section 11.07:</u>	<u>Notices; Documents; Delivery</u>	30
<u>Section 11.08:</u>	<u>Ownership of Property</u>	30

This Declaration of protective covenants, conditions, and restrictions for TIERRA VIVA SUBDIVISION is made this 1st day of September, 1997, by Marla D. Storms-Sorrels, formerly known as Marla D. Storms, and L. Michael Messina and Patricia A. Madrid Messina, Husband and Wife, said parties jointly hereafter referred to as Declarant.

### RECITALS

1. Declarant is the owner of all real property shown and designated on the Plat entitled "TIERRA VIVA SUBDIVISION" located in Bernalillo County, New Mexico and more particularly described as Lots 1 through 36, inclusive, as shown on TIERRA VIVA SUBDIVISION Plat filed in the Office of the County Clerk of Bernalillo County, New Mexico, on August 20, 1997, as document number 97085228, in Vol. 97C, folio 252.

2. It is the intent and desire of Declarant to develop TIERRA VIVA SUBDIVISION as a single-family residential community; the general architecture, style of the community shall be of southwestern design. This objective will be of primary importance in reviewing plans by the Architectural Control Committee.

3. It is the desire of Declarant that TIERRA VIVA SUBDIVISION be designed in accordance with a common plan, design, and scheme, and that the values and amenities of the subdivision be preserved; to this end the Declarant desires that TIERRA VIVA SUBDIVISION be subject to the covenants, conditions, restrictions and easements, hereinafter set forth, each and all of which are for the benefit of the properties and the owners and residents thereof.

4. It is the intent of the Declarant that the covenants, conditions and restrictions herein be binding upon all property in TIERRA VIVA SUBDIVISION, and that the benefits of such covenants, conditions, and restrictions inure to and be for the benefit of and binding on all property in TIERRA VIVA SUBDIVISION; accordingly, all property owners of TIERRA VIVA SUBDIVISION shall be entitled to and shall have standing in an appropriate court of law or equity to enforce these covenants, conditions, and restrictions.

NOW THEREFORE, the Declarant does hereby declare that the real property described above known as TIERRA VIVA SUBDIVISION shall be subject to the covenants, conditions, restrictions, and easements described herein, and such property shall be held, transferred, sold, conveyed, and occupied subject to such covenants, conditions, restrictions, and easements.

## ARTICLE 1

Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article 1 shall have the meanings as defined in this Article for the purposes of these Covenants, Conditions, and Restrictions.

Section 1.01:            Association.

The term "Association" shall mean TIERRA VIVA SUBDIVISION HOMEOWNERS' ASSOCIATION, INC., a New Mexico non-profit corporation described in the Article 5, and any predecessor or successor unincorporated association.

Section 1.02:            Board.

The term "Board" shall mean the Board of Directors of the Association and the governing body of any predecessor or successor unincorporated association.

Section 1.03:            City.

The term "City" means the City of Albuquerque, a municipal corporation.

Section 1.04:            Eligible Mortgagee.

The term "Eligible Mortgagee" means any holder of a first mortgage lien against any Lot provided that such mortgagee has given the Association written notice of its mortgage setting forth its name and address and identifying the Lot, by legal description and address, which is subject to such first mortgage.

Section 1.05:            Fiscal Year.

The term "Fiscal Year" shall be the calendar year; but, a different Fiscal Year may be adopted by the Association by By-Law or Board Resolution.

Section 1.06:            Improvements.

The term "Improvements" shall include, without limitation, buildings, out-buildings, (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, courtyard walls, privacy walls or fences, stairs, decks, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), and any structure and excavation of any type or kind.

Section 1.07:            Lot.

The term "Lot" shall mean each of the Thirty-Six (36) lots, on the Plat together with the Improvements located on each such Lot.

Section 1.08:            Mortgage.

The term Mortgage shall mean a deed of trust, as well as a mortgage, and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, as well as a Mortgagee.

Section 1.09:            Owner/Lot Owner.

The term "Owner" shall mean the persons or entities, including Declarant, holding the beneficial ownership of the fee, including the purchaser under a real estate contract, and shall not include persons holding only a security interest or a seller under a real estate contract. For the purposes of the Article entitled, "Permitted and Prohibited Uses of Property", unless the context otherwise requires, "Owner" shall include the family, invitees, licensees and tenants of any Owner. The terms Owner and Lot Owner shall be one and the same and may be used interchangeably.

Section 1.10:            Plat.

The term "Plat" shall mean all of the real property shown on the Plat and comprising the Subdivision Plat of Tierra Viva Subdivision, as recorded in the Bernalillo County, New Mexico real estate records on August 20, 1997, in Vol. 97C, Folio 252.

Section 1.11:            Subdivision.

The term "Subdivision" shall mean Tierra Viva Subdivision as approved by the City.



Section 1.12:            Subdivision Restrictions.

The term "Subdivision Restrictions" shall mean, with respect to all property within the Subdivision, the limitations, easements, restrictions, covenants, conditions, terms, requirements, and obligations set forth in this Declaration, as this Declaration may from time to time be amended.

ARTICLE 2

Property Subject to Subdivision Restrictions

Section 2.01:            All of the property shown on the Plat shall be subject to the subdivision restrictions.

ARTICLE 3

Permitted and Prohibited Uses of Property  
Duties and Responsibilities of Owners

Section 3.01    Permitted Uses of Property Within the Subdivision.

All Lots in the Subdivision are hereby restricted to single family residential dwellings for residential use. All buildings or structures erected upon said premises shall be of new constructions and no buildings or structures shall be moved from other locations onto said premises. No structures of a temporary character, including any trailer, basements, tent, shack, garage, or other out-building, shall be used on any portion of the premises at any time as a residence either temporarily or permanently. No business, occupation, profession, trade, or other nonresidential use of any kind, or noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Carport, garages and other areas within a residence not initially designed as a living area shall not be used as a living area regardless of alterations thereto. Public or private auctions, garage sales or similar events or activities are prohibited. Unless originally specifically designed or constructed, the roofs of residence garages and carports shall not be used as sun decks, walk decks, or the like; and no persons shall be permitted on the roofs except for such time as is required for repair and maintenance.

Section 3.02. Compliance with Soils Report.

All structures, landscaping and other uses on any lot in this subdivision shall be in compliance with the Soils Report for the subdivision. The Soils Report was prepared by Vinyard & Associates, dated September 4, 1997, and is available at the office of D. Mark Goodwin & Associates, civil engineers, 8916-B Adams NE, Albuquerque, New Mexico 87113, or Vinyard & Associates, 8916-A Adams Street NE, Albuquerque, New Mexico 87113. Any soils compaction, replacement of fill dirt, drainage work or other matters required in connection with any section structures, landscaping or other uses shall be the sole responsibility of the Lot Owner and/or the person undertaking such use, and the Declarant shall have no responsibility or liability therefor.

Section 3.03. Compliance with Drainage Plan and Private Facility Drainage Covenant.

Site drainage within the subdivision is accommodated by on-site retention. Ponding areas adjacent to streets and in-between dwellings are designed to collect and retain run-off, which will then percolate into the ground. Use of a french drain in the low points of the ponding areas will facilitate percolation and avoid areas of standing water. All site grading within the subdivision has been completed in accordance with the approved Tierra Viva Subdivision Grading and Drainage Plan prepared by D. Mark Goodwin & Associates, civil engineers, dated July 3, 1997. Any and all construction and grading by lot owners must comply with the provisions of this draining plan.

A Private Facility Drainage Covenant in favor of the City of Albuquerque is recorded in the office of the Bernalillo County Clerk and Recorder on August 14, 1997 as Document No. 97-083563, in Book 97-22 at pp. 1870-1873 with respect to all property in the subdivision. The owners and developers of the subdivision have completed all work required by the City of Albuquerque described in the Covenant. The owner of each lot within the subdivisions shall be primarily responsible for maintaining their respective lot strictly in accordance with the provisions and requirements contained in the Covenant. In particular, the owner of each lot shall maintain grades, concrete walls, and drainage on each individual lot so that runoff from any on-lot source will remain within the lot, accumulating away from building foundations, perimeter walls, sidewalks, and streets. The owner of each lot may install landscaping designed to increase the rate of percolation and evaporation. The owners of each lot may install lot irrigation systems, watering systems, or water-using appliances, appurtenances, or equipment within each individual lot, provided that any such system or equipment shall be designed, installed, and maintained to prevent overflow and runoff on to adjacent property. The owner of each lot shall construct or cause to be constructed, all structures intended for human habitation within the property, such that the minimum finished pad elevation for the lower, or ground-level floor, of each structure, is 4,974.50 feet above mean sea level.

Section 3.04. Landscaping.

All landscaping must be regularly maintained, including sufficient watering, mowing, weed removal and pruning of all plants to maintain a healthy, neat, and attractive condition and appearance. Each owner will be responsible for keeping their lots cleared and free of all weeds, trash, and other detracting conditions.

Section 3.05. Alterations and Additions.

No alterations or additions to, restucco, or repainting of the exterior of any residence shall be made unless it shall conform in architecture, material, and color to the dwelling as originally constructed upon the Lot, and such alteration or addition must have architectural control approval as provided in Article 8 below.

Section 3.06. Vehicles.

No trucks, cars, vehicles, and no boats, trailers, camper, or recreational vehicles shall be parked longer than two (2) days upon any Lot or upon any public parking area in the Subdivision; provided however, boats, trailers, campers or recreational vehicles may be parked in a completely enclosed garage. Garage doors shall normally be kept in the fully closed position. No vehicles shall be placed on blocks and no vehicle shall be repaired or overhauled except when within an enclosed garage. Passenger vehicles (excluding trucks) owned by and regularly used by family members residing on the property may be parked on the driveway immediately in front of a garage bay if all garages are otherwise occupied by other passenger vehicles (not boats, trailers, campers, or recreational vehicles) regularly used by members of the household and not in storage.

Section 3.07. Animals.

No animals, livestock or poultry of any kind shall be raised, bred or kept in any dwelling or on any Lot, except that dogs, cats, birds or other domesticated household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Owner shall strictly comply with all applicable laws and ordinances relating to domestic animals and pets.

Section 3.08. Garbage and Rubbish.

Garbage and trash shall not be placed outside the residence except in an approved container or receptacle for pick-up. Garbage and rubbish or any substance that is noxious or unsightly shall not be dumped or allowed to remain on any Lot. No rubbish, trash, garbage,

weeds, leaves, or any other matter shall be burned on the premises. Incinerators of every kind shall be prohibited.

Section 3.09. Air Conditioning, Compressors, Evaporative Coolers, Solar Units.

Air conditioners, evaporative coolers, compressors, and solar units, shall be installed so as to be shielded from view of any neighboring lot or street.

Notwithstanding, air conditioners, evaporative coolers, compressors, or solar units, whether part of initial construction on a lot, or whether installed later, must be subject to the review and approval of the Architectural Control Committee.

Section 3.10. Accessories.

No radio, television or similar tower shall be erected on any Lot or attached to the exterior of any dwelling. No clotheslines, wood piles, basketball apparatus, free-standing mailboxes or newspaper receptacles, exterior storage areas, sheds or structures, heating or air conditioning equipment, or other exterior fixtures, machinery or equipment shall be permitted. Any such use of equipment as is approved and authorized shall be attractively screened or concealed (subject to all required approvals as to architectural control) so as not to be visible from neighboring property.

Section 3.11. Easements.

Perpetual easements for underground installation and maintenance of sewer, water, electrical, telephone, gas, cable television, and other utilities and drainage facilities, for the benefit of the adjoining land owners and/or the municipality and/or municipal or private utility company ultimately operating such facilities, are reserved as shown on the Subdivision map of the Properties filed with the County Clerk of Bernalillo County, New Mexico.

Section 3.12. No Further Subdivisions.

None of the Lots shall be re-subdivided into smaller lots or conveyed or encumbered in less than the entire original dimensions as shown on the plat of this Subdivision.

Section 3.13. Fireworks.

Fireworks of any kind, whether reasonable or non-explosive, shall not be stored, brought or permitted on any part of the property within the Subdivision, including within residences, nor shall any fireworks be ignited, displayed or exploded on any part of the property within the Subdivision.

Section 3.14. Noise.

Lot owners and occupants shall avoid making or permitting to be made loud, disturbing or objectionable noises or playing or permitting to be used or played musical instruments, radios, phonographs, televisions, amplifiers or any other instruments or devices in such manner as may disturb adjoining lot owners, occupants or guests.

Section 3.15. Solar Installation.

Lot Owners may install solar collectors, subject to Section 3.08 and the architectural control requirements of Article 8 below.

Section 3.16. Swimming Pools.

Lot Owner may install swimming pools, subject to the architectural control requirements of Article 8 below. In the event of such installation, the Owner and/or residents of the Lot on which the pool is located shall maintain the pool in good, clean condition.

Section 3.17. Outside Lighting.

All exterior light fixtures and lamps of any kind must be approved in writing by the Architectural Control Committee prior to placement or installation.

## ARTICLE 4

Membership in the Association Voting RightsSection 4.01: Membership.

a. Each Owner, by virtue of being an Owner and during such time as such Owner remains an Owner, shall be a member of the Association or, a member of the unincorporated association preceding the Association or succeeding to the Association.

b. The rights, duties, privileges and obligations of an Owner as a member of the Association or its preceding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and By-Laws.

Section 4.02: Voting Rights.

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 cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Owner is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated 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.

Section 4.03: Voting Rules.

When any provision of the Subdivision Restrictions 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 (a) whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members; (b) the percentage requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association, and (c) in any election held pursuant to the requirements of this Declaration, ballots may be transmitted to Declarants in the manner provided for the giving of notice.

## ARTICLE 5

Organization, Powers and Duties of the AssociationSection 5.01: Organization.

a. The Association shall be organized as a non-profit organization charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.

b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not consistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and the then current Architectural Control Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Architectural Control Committee in favor of any person relying thereon in good faith.

d. The Board shall be appointed by the Declarant, and shall serve at the Declarant's pleasure until December 31, 1999. Thereafter, the Board shall be elected by the members at annual meetings of the Association.

e. The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration for the Association.

Section 5.02: Powers and Authority of the Association.

The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in this Declaration, to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Subdivision Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the

exercise of any of the express powers of the Association or for the peace, health, comfort, safety, and general welfare of Declarants.

a. Any of the following actions by the Board shall require a majority vote or written assent of the members:

1. Entering into a contract of the furnishings of goods or services for the Association for a term longer than six (6) months with the exception of prepaid casualty or liability policies not to exceed one (1) year duration provided that the policy permits short rate cancellation by the insured; and

2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties of the maintenance, repair, operation, or administration of any common areas and/or easement areas, the Association shall have the power and authority:

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of any common area and all Improvements located thereon;

2. To maintain or improve the adjoining parts of the Hackman lateral used on a recreational trail;

3. To maintain and improve the entrance area of the subdivision;

4. To obtain, maintain, and pay for such insurance policies or bonds, whether or not required by this Declaration, as the Association shall deem to be appropriate for the protection or benefit of the Subdivision, the Association, the members of the Board, and the Declarants;

5. To incur indebtedness; but any indebtedness in excess of the Association's estimate of its estimated gross revenue for the year incurred or any indebtedness to be repaid over a period longer than one (1) year must be approved by a two-thirds (2/3) vote of the Members;

6. To contract and pay for, or otherwise provide for, such utility services, including, but without limitation, water and electrical services, as may from time to time be required;



7. To contract and pay for, or otherwise provide for, the services of architects, engineers, attorneys, bookkeepers and certified public accountants, and such other professional and non-professional services as the Association deems necessary;

8. To contract and pay for, and otherwise provide for, such materials, supplies, furniture, equipment, and labor as and to the extent the Association deems necessary;

9. To pay and to discharge any and all liens from time to time placed or imposed upon any common area, or on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation, or administration;

10. To lease or contract for the use of land and Improvements for recreation or other purposes of the extent the Association deems necessary; and

11. To place and maintain upon the common area such signs as the Association may deem necessary for the identification of the Subdivision and/or roads, the regulation of traffic, including parking, for the health, welfare and safety of owners and other persons.

c. In fulfilling any of its obligations or in exercising any of its rights with respect to the development, construction, installation or acquisition of a capital improvement, the Association shall have the power and authority:

1. To contract and pay for such Improvements upon such terms and conditions as the Association shall deem appropriate;

2. To obtain, maintain, and pay for such insurance policies or bonds as the Association may deem appropriate for the protection and benefit of the Association, the members of the Board, and Declarants, including, but without limitation, builder's risk insurance, additional comprehensive liability insurance, workman's compensation insurance, and performance and fidelity bonds;

3. To incur indebtedness under terms and conditions as provided by this Article; and

4. To contract and pay for the services of architects, engineers, attorneys, and certified public accountants, and other professional and non-professional services.

d. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the Governing Body of any other subdivision to jointly manage the affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

e. The Association shall have the right from time to time to pay, compromise, or contest any and all taxes and assessments levied against all or any part of the Common Area any income of or addressed to the Association, and upon any personal property belonging to or assessed to the Association.

f. The Association shall have the power and authority from time to time, in its own name, on its own behalf, and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Subdivision Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration.

g. The Association shall have the power, but not the duty, to enter upon and maintain, provide for the maintenance of, any Lot or Improvements which is not maintained by the Owner thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner.

Section 5.03                      Liability of Members of Board.

No member of the Board shall be personally liable to any Declarant, or to any other person, including Declarant, for any error or omission of the Association, its representatives and employees, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

Section 5.04                      Duties and Obligations of the Association.

a. The Association shall have the obligation and duty, subject to the Subdivision Restrictions, to do and perform each and everything set out in this Section, for the benefit of the Lot Owners and for the maintenance and improvement of the Subdivision.

b. The Association shall accept all Lot Owners as members of the Association.

c. The Association shall accept from Declarant any common areas and maintenance responsibilities in any common area subject to the reservations of all easements, licenses and rights to use and the rights of Declarant.

d. The Association shall maintain, or provide for the maintenance of, any common area and all Improvements thereon.

e. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs and trees) on common areas and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance.

f. The Association shall obtain and maintain in force the following policies of insurance:

1. Fidelity Bond: The Association shall procure and maintain a fidelity bond naming the Association as obligee in an amount equal to the estimated maximum amount of funds to be in the custody or control of the Association or its professional management company, including reserves for replacement and working capital, at any given time during the term of such bond, but in any event in an amount at least equal to three (3) months' aggregate monthly assessments on all Lots plus the sum of all reserve funds. Such fidelity bond shall cover all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including the officers, directors, employees and agents of the professional management company employed by the Association pursuant to these Restrictions. Provided, however, that the fidelity bond to be procured by the Association need not cover the professional management company and its officers, directors, employees and agents if such professional management company provides a sufficient fidelity bond naming the Association as an additional obligee or loss payee. Such bond shall contain a waiver of any defense or exclusion based upon the exclusion of persons serving without compensation from the definition of "employees" or other similar terms or expressions. Such bond shall require at least ten (10) days' prior written notice to the Association of cancellation or substantial modification (including cancellation for non-payment of premiums). The cost of such fidelity bond (except for premiums on any fidelity bond provided by the professional management company which the Board determines to be satisfactory and in compliance with the provisions of this Section) shall constitute a common expense of the Subdivision.

2. Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any member and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the members and the Association and its officers, directors, employees and agents. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for non-payment of premiums) to the Association and to any Mortgagee having a first lien against any Lot which is listed as a scheduled holder of such a first mortgage in the policy and to the City. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with retard to any policies of liability insurance carried individually by any Declarant.

3. Additional Insurance: The Board shall have the authority to obtain such other insurance, including the authority to increase the scope or amount of any insurance required by this Article 5, as the Board shall determine to be necessary or advisable. The cost of any such additional insurance shall constitute a common expense of the Subdivision.

i. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Eligible Mortgagee upon request.

j. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of the Subdivision Restrictions.

## ARTICLE 6

### Funds, Assessments and Delinquency

#### Section 6.01: Creation of Lien and Personal Obligation for Assessments.

The Owner for each Lot owned by it, hereby agrees to pay, and each Owner of any Lot, by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association (a) maintenance assessments, (b) delinquency assessments, and (c) all other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment, plus interest, late charges, costs and attorney's fees, shall be a charge against the Lot and shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the Owner or Owners of such property on the assessment date. The personal obligation to pay assessments shall not pass to successors in title unless expressly assumed by them.

#### Section 6.02: Operating Fund.

There shall be an operating fund, into which the Association shall deposit all monies paid to it, and from which the Association shall make disbursements in performing the functions for which the foregoing assessments are levied.

Section 6.03:            Maintenance Assessment.

a. Within thirty (30) days prior to the commencement of each fiscal year the Association shall estimate the costs and expenses to be incurred by the Association during such year, including a reasonable provision for contingencies, and reserves for major repair and replacement, and shall subtract from such estimate an amount equal to the anticipated balance, exclusive of any reserves for contingencies and reserves for major repair and replacement, in the operating fund at the start of such year. The sum or net estimate so determined shall be assessed to all Owners in shares; one (1) share for each Lot owned.

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection a, if approved by a two-thirds (2/3) vote of the members.

c. Maintenance assessments shall be due and payable to the Association when levied or in such installments during the year, and on such due dates as the Board shall designate.

d. The Board shall not levy assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and which are not part of such budgeted gross expenses without the vote or written consent of the Members.

e. From and after the December 31st immediately following the conveyance of the first Lot by Declarant, the maximum maintenance assessment may be increased each year not more than ten percent (10%) from the previous year without a vote of two-thirds (2/3) of the Members, non-cumulative from year to year so that an increase not used in one year may not be used in a subsequent year without a vote of the members.

Section 6.04:            Reserves as Trust Funds.

Reserves for major repairs and replacements and for capital improvements to be built or acquired shall be kept segregated from the other monies held by the Association as trust funds in an account or accounts labeled "Reserve Trust Fund" and shall be withdrawn and used only for the purposes of major repairs and replacements or for capital improvements respectively, unless a different or other use is authorized by the vote of the members.

Section 6.05:            Delinquency.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this

Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the Owner to pay a sum (late charge) to be determined by the Association, to pay the costs of handling the delinquent sum. Such a charge shall be considered an additional assessment and collectible with the assessment for which it was charged. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate set from time to time by the Association, however not greater than twenty percent (20%), and the Association may, at its option, bring an action at law against the Owner or Owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the Lot, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each Owner vests in the Association, or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent assessments.

Section 6.06:            Notice of Lien.

No action shall be brought to foreclose an assessment lien less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the office of the Bernalillo County Clerk; said notice of claim must recite a good and sufficient legal description of any such Lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges, costs and attorney's fees recoverable by an action at law and the name and address of the Association.

Section 6.07:            Foreclosure Sale.

Any such sale provided for above is to be conducted in accordance with the customary practice of the court of the State of New Mexico, applicable to the foreclosure of Mortgages, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 6.08:            Curing a Default.

Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such

release, together with the payment of such other costs, interest or fees as shall have been incurred.

Section 6.09:            Cumulative Remedies.

The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

Section 6.10:            Certificate of Payment.

The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 6.11:            Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence to each Lot upon the sooner of (i) the first day of the month following completion of construction of the Improvements on the Lot or (ii) the first day of the first month following the second anniversary date of the recording of this Declaration. Construction shall be deemed completed upon the issuing of a Certificate of Occupancy by the City. The first such annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement. Until the second anniversary date of the recording of this Declaration, the Declarant shall make up the shortfall necessary to meet the Association's obligations.

## ARTICLE 7

Duties and Responsibilities of OwnersSection 7.01: Observance of Subdivision Restrictions.

Each Owner shall comply with the Subdivision Restrictions and will cause and be responsible for Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's dwelling to likewise comply with the Subdivision Restrictions.

## ARTICLE 8

Construction and Architectural ControlSection 8.01: Architectural Control Committee.

An Architectural Control Committee for the Subdivision is hereby established consisting of the following two persons:

William T. Caniglia  
P.O. Box 2164  
Albuquerque, NM 87103

L. Michael Messina  
20 First Plaza, Suite 420  
Albuquerque, NM 87102

The Committee shall serve at the pleasure of the Declarant who shall have the right to appoint, reappoint and discharge members of the Committee at will so long as the Declarant owns any lots within the Subdivision. Thereafter, the Committee shall serve at the pleasure of the Board.

Section 8.02: Construction of Improvements.

(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement of whatsoever nature; and before anyone shall paint, texture, repaint or re-texture the exterior surfaces of any Improvement, there shall be submitted to the Committee plans and specifications as follows:

(i) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc., together with a landscaping plan (including all planting materials and landscape areas) as shall enable the Committee to evaluate whether the proposed



construction, alteration, installation, etc., complies with these restrictions, and will harmonize with the motif and style of the Subdivision; and be compatible with surrounding homes; and

(ii) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications. If deemed necessary by the Committee, the following may be required as part of the application: (A) details of exterior furnishings including exterior colors, and exterior material finish texture; (B) a drainage report prepared by a registered engineer; and (C) an architect's rendering showing the proposed construction.

(iii) Upon completion of the stem wall for the home, the Committee shall be provided a stem wall survey to enable the Committee to ascertain if the home is located upon the Lot in conformance with the approved plans and with these Restrictions. No further construction can take place on the Lot until the Committee has given written approval of the survey. The Committee shall have 72 hours to approve the survey, otherwise it shall be deemed approved.

(b) No Improvement of any kind, installations, painting or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefor shall have received written approval of the Committee. All such final plans shall include plot plans showing the location on the Lot of all Improvements proposed to be constructed and/or installed, planted, placed or maintained on the Lot and shall further include elevations, together with the proposed color scheme and textures for roofs and exteriors thereof, indicating the materials for same.

The Committee is authorized to charge not more than \$100.00 for review of plans and specifications. Payment of the required charge shall be a part of, and condition to, the submittal of plans and specifications for Committee approval.

(c) The Committee shall approve or disapprove within thirty days after receipt thereof plans and specifications which have been submitted to it. One set of plans and specifications, with the Committee's approval or disapproval and requirements endorsed thereon, shall be returned to the applicant and the other copy thereof, with a duplicate endorsement thereon corresponding to the first set, shall be retained in the Committee's files.

In the event that the Committee shall fail to approve or disapprove the plans, specifications and other information within thirty days after receipt thereof by the Committee, then such approval shall not be required, provided that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any of the Restrictions.

The Committee shall have the right and power to disapprove any plans, specification or details submitted to it, if the Committee shall find that the plans and specifications are not in

accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the Subdivision, or surrounding homes, or if the plans and specifications are incomplete. The Committee shall have the right to consider the impact of proposed Improvements upon the views from other Lots, but the Committee shall be under no obligation to preserve views, or to deny approval of plans for Improvements which will, or may, impair views.

(d) If any Improvement or work is completed or done without compliance with this Article, such Improvement or work shall be deemed to have been done in compliance with this Article if no action has been commenced to enforce the provisions of this Article against such Improvement or work within one (1) year of its completion.

(e) Approval of building plans and/or specifications by the Committee will not constitute a waiver of the Restrictions if they violate the Restrictions upon the completion of construction.

Section 8.03:            Design Guidelines.

The following design guidelines are the criteria applicable to homes to be constructed in this Subdivision:

ARCHITECTURAL STYLE:

The architectural style of homes in the subdivision shall be traditional or contemporary southwestern design, including Pueblo style and Territorial style. Northern New Mexico style characterized by metal pitched roofs and tiled roofs in acceptable earth tone colors may be allowed but such style will be limited in number and location. No residence should stand so apart in its design or construction as to detract from the visual harmony of Tierra Viva.

BUILDING SURFACE MATERIAL:

Except for accents and trim, all homes shall have stucco or adobe walls. Materials other than stucco and adobe require specific approval of the Architectural Control Committee.

HOME COLORS:

The Architectural Control Committee shall establish a sample list of acceptable stucco materials and colors. These materials will generally be limited to subtle earth tones.

**ROOF MATERIALS:**

Predominate roof styles shall be flat with parapet walls high enough to conceal roof surfaces and any roof-mounted equipment. Slate or tile materials and metal roofs may be permitted depending on location and subject to approval of the Architectural Control Committee.

**ROOFTOP MECHANICAL EQUIPMENT:**

Except for mechanical equipment located on flat roofs; no mechanical equipment shall be located other than at ground level. For flat roof houses, mechanical equipment may be located on the roof only if the house structure prevents visibility of the equipment from the abutting street.

**LANDSCAPING REQUIREMENTS:**

Not more than 20% of the total landscaped areas shall consist of high water-use turf and the remaining 80% shall consist of low to medium water use vegetation. All landscaping shall comply with the Water Conservation Landscaping and Waste Water Ordinance of City of Albuquerque (Section 6, Article 1, Parts 1, 2, and 3).

**SIDEWALKS AND DRIVEWAYS:**

The owner of a lot shall construct sidewalks as required by the City of Albuquerque and subject to City specifications at the time that a residence is constructed. All sidewalks shall consist of brown earth-tone colored concrete as specified by the Architectural Control Committee.

Subject to compliance with building code requirements, soft surface crusher fines may be used for finished driveway surfaces. Specifications for crusher fine driveways shall be submitted with plans to the Agricultural Control Committee.

**OFF-STREET PARKING**

Off-street parking shall be provided on each lot for a minimum of 5 vehicle spaces (10' x 20' minimum dimension). Dwellings with more than 4 bedrooms will require a total of 6 off-street parking spaces.

**MINIMUM HOUSE FOOTPRINT:**

Unless specifically approved by the Architectural Control Committee, all homes shall be of a single level design with a minimum of 2,200 square feet and a 2-car garage. Two-story homes may be allowed depending on location and design and provided in no event shall the second story exceed 60% of the heated area of the first floor.

**MAXIMUM BUILDING HEIGHT:**

Twenty-Six (26) feet.

**BUILDING ENVELOPE:**

A building envelope has been designated for each lot including a maximum building area. All construction shall be within the building envelope and subject to such area limitation. In all events the front yard set back shall be not less than 20'.

**YARD WALLS:**

Yard walls shall consist of courtyard designs and shall be stucco surfaced in the same color as the house. There shall be no 'party line' walls (rear lot lines and side lot lines).

**COURTYARD WALLS/PRIVACY WALLS:**

Courtyard or primary walls are designed to enclose outdoor spaces and to extend building masses and living areas into the landscape. At least one end of all walls must be attached to a building. All walls shall be constructed with considerable mass and thickness. Such walls shall not exceed 5'6", except that walls extending into the required front yard shall not exceed 4' in height. Setbacks from lot lines shall be as follows:

Front - 20 feet

Rear - Lot line

Side - 5 feet

Side Yard Facing a Street - 20 feet

Section 8.04:            Estoppel Certificate.

Within thirty (30) days after written demand is delivered to the Committee by any Owner, and upon payment therewith to the Association of a reasonable fee to cover costs from time to time to be fixed by the Association, the Committee shall provide Owner with an estoppel certificate executed by an officer of the Association and acknowledged, certifying with respect to any Lot owned by said Owner, that as of the date thereof either (1) all Improvements and other work made or done upon or within said House by the Owner, or otherwise, comply with this Declaration, or (2) such Improvements or work do not so comply, in which event the certificate shall also (a) identify the non-complying Improvements and work and (b) set forth with particularity the cause or causes for such noncompliance. Any purchaser from the Owner, or mortgagee or other encumbrancer shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between Owner, the Association, and all Owners and such purchaser, and mortgagee.

Section 8.05:            Liability.

Neither the Committee, the Board, nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- a.        The approval of any plans, drawings, and specifications, whether or not defective,
- b.        The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications,
- c.        The development or manner of development of any property within the Subdivision, or,
- d.        The execution and recording of an estoppel certificate whether or not the facts therein are correct; provided, however, that the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

Without in any way limiting the generality of the foregoing, the Committee, Board, or any member thereof, may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.

## ARTICLE 9

Protection of Security InterestsSection 9.01: Application of Assessments to Mortgagees.

The liens created under the Subdivision Restrictions upon any Lot shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Lot made in good faith and for value, provided that after the foreclosure of any such mortgage the amount of all maintenance and special assessments, and all delinquent assessments to the extent such delinquent assessments relate to expenses incurred after such foreclosure, assessed hereunder to the purchaser at foreclosure sale, shall become a lien upon such lot upon recordation of a notice thereof with the County Recorder.

Section 9.02: Right to Notice.

The Association shall provide all Eligible Mortgagees with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due the Association by the Owner of a Lot which is subject to a first mortgage held, by any Eligible Mortgagee and which delinquency remains uncured for a period of sixty (60) days or more.

Section 9.03: Limitation of Enforcement Against Mortgagee.

No violation by an Owner of the Subdivision Restrictions or enforcement of the Subdivision Restriction against an Owner shall defeat or render invalid the lien of any mortgagee made in good faith and for value against the property of such Owner, but, the Subdivision Restrictions shall be effective against any Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 9.04: Rights of Mortgagee to Information.

A mortgagee shall, upon written request, be entitled to inspect the Declaration, By-Laws, Subdivision Rules, books and records of the Association on the same basis as a Member. If a mortgagee furnishes the Association, in writing, with its address, it shall be entitled to receive within a reasonable time, financial statement for the immediately preceding fiscal year, free of charge, and shall receive notice of meetings on the same basis as members.

Section 9.05:            Application of Subdivision Restrictions.

Except as provided in this Article or specifically provided elsewhere in the Subdivision Restrictions, all mortgages and mortgagees are bound by the provisions of the Subdivision Restrictions.

Section 9.06:            Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

Section 9.07:            Mortgage Approval.

So long as the Declarant has more than a majority of the voting power of the Association, HUD or VA approval is required prior to (a) amendment of the Association's Articles of Incorporation, Bylaws or this Declaration; (b) annexation of property to the Association; (c) encumbering, conveying or dedicating Common Areas; or (d) dissolution of the Association.

ARTICLE 10

Limitation of Subdivision Restrictions on Declarant

Section 10.01:            Limitation of Subdivision Restrictions on Declarant.

Declarant is undertaking the work of constructing the Subdivision. The completion of that work and the sale, rental and other disposition of the Lots is essential to the establishment of the Subdivision. In order that said work may be completed and said property be established and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

a. Prevent Declarant or its agents, employees, and contractors from doing on the properties whatever is reasonably necessary or advisable in connection with the completion of the work; or

b. Prevent Declarant or its agents, employees, and contractors or homebuilders with Declarant's approval, from erecting, constructing and maintaining on any part of parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or

c. Prevent Declarant from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision;

d. Prevent Declarant or homebuilders with Declarant's approval, from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot.

10.02: Use of Subdivision Name.

Declarant may use the name of the Subdivision and the Subdivision Restrictions in other subdivisions or projects, whether located adjacent to the Subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of the Subdivision and Association. Consent is hereby given to Declarant and Declarant's assigns to use such names of a Corporation and upon request of Declarant, the Association agrees to execute a written consent authorizing Declarant to use the same or similar name which Consent will be filed with the State Corporation Commission.

Section 10.03: Architectural Control.

Improvements by Declarant to the Subdivision do not require approval of the Committee.

Section 10.04: No Amendment or Repeal.

The provision of this Article may not be amended or repealed without the consent of Declarant.

ARTICLE 11

Miscellaneous Provisions

Section 11.01: Amendment or Repeal: Duration.

a. These Restrictions and any provisions thereof which are in effect with respect to all or part of the Subdivision, may be amended or repealed in the following manner:

1. The approval by three-fourths (75%) vote or written consent of the voting power of the membership in the Association; and



2. The recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth, in full, the amendment or amendments so approved, including any portion or portions of this Declaration repealed, and certifying that such amendment or amendments have been approved by the required vote or consent of the Owners.

At any time during which Declarant is the only owner of property within the Subdivision, Declarant may amend or correct these Restrictions by a recorded instrument of amendment or correction.

b. All of the provisions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision through December 31, 2052; provided that these Restrictions shall terminate if, within one (1) year prior to December 31, 2052, there shall be recorded an instrument directing the termination of these Restrictions signed by two-thirds (2/3) of the Owners of record title. These Restrictions in effect immediately prior to the expiration date shall, subject to the provisions of Section 11.01a., be continued automatically without any further notice, for an additional period of ten (10) years unless within one (1) year prior to expiration of such period these Restrictions are terminated as set forth in this Section.

c. The right of access to the Lots may not be amended or terminated without the unanimous consent of the Lot Owners.

Section 11.02:                      Enforcement: Non-Waiver: No Forfeiture.

a. Except to the extent otherwise expressly provided herein, the Association or any Owner shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon other Owners, or upon any property within the Subdivision.

b. Except to the extent otherwise expressly provided herein, any Owner or Owners shall have the right to enforce any and all of the provisions now or hereafter imposed by the Subdivision Restrictions upon the Association.

c. Every act or omission whereby any restriction, condition, or covenant of the Subdivision Restrictions is violated, in whole or in part, is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or by an Owner or Owners, as provided for in this Section. Any provisions to the contrary notwithstanding, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition, or obligation herein set forth.

e. Each remedy provided for in the Subdivision Restrictions is cumulative and not exclusive.

f. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien, or charge of the Subdivision Restrictions shall not constitute a waiver of any right to enforce any such provision or any other provision of the Subdivision Restrictions.

g. No breach of any of the provisions of the Subdivision Restriction shall cause any forfeiture of title or reversion or bestow any rights of re-entry whatsoever.

h. Reasonable attorney's fees and costs may be awarded in any action brought to enforce the provisions of the Subdivision Restrictions.

Section 11.03:

Construction; Compliance with Laws; Severability; Singular and Plural; Titles.

a. All of the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision.

b. No provision of the Subdivision Restrictions shall be construed to excuse any person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

d. The singular shall include the plural and the plural, the singular, unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

e. The table of contents and all titles used in the Subdivision Restrictions, including those of Articles and Sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such Articles, Sections, nor any of the terms or provisions of the Subdivision Restrictions. Any numbered or lettered subdivision of a Section is referred to as "subsection" or "subsections" and any indented portion of this Declaration which is unnumbered and unlettered shall be referred to as "Paragraph".

Section 11.04:                      Lot Splitting; Consolidation.

- a. No Lot within the Subdivision shall be split unless the Board shall have given its written consent.
- b. No two or more lots within the Subdivision shall be consolidated into one Lot unless the Board shall have given its written consent.
- c. Nothing contained in this Section shall apply to the splitting of any Lots by Declarant or the consolidation of two or more Lots into one Lot by Declarant.
- d. The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to keep the assessment and voting rights the same after the split or consolidation as they were before.

Section 11.05:                      Obligations of Owners; Avoidance; Termination.

- a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on him by the Subdivision Restrictions by virtue of his being an Owner.
- b. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date such transfer is recorded, provided such transferring Owner notifies the Association of the transfer as provided by the Subdivision Restrictions, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under the Subdivision Restrictions following the date of such termination.

Section 11.06:                      No Partition or Severance of Interests.

There shall be no partition or severance of any Lot, from the Subdivision and the Declarant, Board, Association and Owners shall not seek to partition or sever any part of a Lot from the Subdivision, nor shall they have any right to maintain an action for judicial partition in connection with the Subdivision unless such right is expressly given by the Subdivision Restrictions. This provision shall not prevent the partition of any Lot or Lots held in joint ownership as long as no physical partition takes place and there is no severance from any incident of the Subdivision Restrictions. No owner shall sever his Lot from its interest in the Association.

Section 11.07:                      Notices, Documents: Delivery.

Any notice or other document permitted or required by the Subdivision Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed as follows:

To the Association: By mailing a copy of the notice to the then-current president of the Association, and by posting a copy of the notice at three conspicuous places in the subdivision.

If to an Owner: At any Lot within the Subdivision owned by the Owner or at such other address given by Owner to the Association, in writing.

Any such address may be changed from time to time by any Owner, or by Declarant by notice in writing, delivered to the Association, by notice in writing, delivered to all Owners.

Section 11.08:                      Ownership of Property.

All funds and facilities provided for by the Subdivision Restrictions and all property of any kind held by the Association and derived from assessments of members, proceeds of insurance carried or obtained by the Association, proceeds of bonds payable to the Association or payment received for damages to the Subdivision, and any right or interest in any such property shall belong to the Declarants in proportion to each Declarant's share of the maintenance assessment, and no assessment or the proceeds of any assessment shall be considered income to the Association. No person has any right to appropriate or make use of such property, except as provided by the Subdivision Restrictions until and unless there has been a partition or distribution of such property. All such property shall be appurtenant to each Lot in proportion to each Lot's share of the maintenance assessment and may not be severed or separated from any Lot, and any sale, transfer, or conveyance of the beneficial interest of the fee of any Lot shall operate to transfer the Declarant's rights in such property without the requirement of any express reference thereto.



STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 23rd day of September, 1997, by L. Michael Messina.

WITNESS my hand and official seal.

My Commission Expires:

4/8/99

Deborah L. Kuehliel  
NOTARY PUBLIC

STATE OF NEW MEXICO )  
 )ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 23rd day of September, 1997, by Patricia A. Madrid Messina.

WITNESS my hand and official seal.

My Commission Expires:

4/8/99

Deborah L. Kuehliel  
NOTARY PUBLIC

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

1997 SEP 23 PM 3:40

BK 9126 PG 2457  
JUDY D. WOODWARD  
CO. CLERK & RECORDER DEPUTY  
2494  
DMC LLC