

RESTRICTIONS

OF

SEVILLE SUBDIVISION

A Declaration of Restrictions, Covenants and Conditions for  
the Creation and Maintenance Of a Planned Residential Development

  
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## SEVILLE SUBDIVISION RESTRICTIONS

### A Declaration of Restrictions, Covenants and Conditions for the Creation and Maintenance of a Planned Residential Development

**THIS DECLARATION** is made as of \_\_\_\_\_, 2004, by **CLEARBROOK INVESTMENTS, INC.**, a New Mexico corporation ("Grantor"), with respect to that certain real property situate in Bernalillo County, New Mexico and more particularly described as follows:

All of the real property shown on the Plat of Seville Subdivision Unit Eight (being a replat of Tract 1-B-1-A, Seville) within the Town of Alameda Grant in Projected Section 3, Township 11 North, Range 2 East New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, recorded on May 4, 2004 in Book 2004-C, Page 137, records of Bernalillo County, New Mexico.

It is hereby declared that all of the described real property is subject to this Declaration which is for the purpose of creating and maintaining a planned residential development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property.

It is the purpose of this Declaration to create a planned unit residential development originally consisting of 114 single family dwellings with each dwelling to be located on an individually owned lot on public streets, with portions of certain lots subject to easements for the benefit of the community, and, if so elected by Grantor or by the Association as provided herein, with portions of the property being owned and/or managed by the Association of Lot Owners for the benefit of the Lot Owners.

This Declaration shall run with the described real property and shall be binding upon and inure to the benefit of Grantor, the Association, each Owner of the described real property or any part of it, and each successor in interest of Grantor, the Association, and any such Owner.

#### 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 Restrictions.

##### Section 1.01: Architectural Control Committee.

The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 10.

##### Section 1.02: Association.

The term "Association" shall mean the Seville Subdivision Homeowners Association, Inc., a New Mexico non-profit corporation described in the Article entitled, "Organization, Powers and Duties of the Association," and any predecessor or successor unincorporated association.

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Section 1.03: 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 1.04: Common Area.

The term "Common Area" shall mean portions of the Subdivision which have been or may be conveyed to the Association for the benefit of the Lot Owners. The initial Common Area is designated as "Tract A", as shown on the Plat of Seville Subdivision Unit 8. The term "Common Area" includes the "Easement Areas".

Section 1.05: Easement Area.

The term "Easement Area" shall mean certain interests in real property including Improvements thereon, the beneficial interests in which are owned or controlled by the Association and maintained by the Association for the common use and enjoyment of the Association members. The initial Easement Area is designated as the "30' Public Trail" and "30' Public Pedestrian Access Easement" as shown on Plat of Seville Subdivision Unit 8 and the appearance of the exterior walls of the Subdivision abutting public right-of-way.

Section 1.06: 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 1.07: Geotechnical Report.

The term "Geotechnical Report" shall mean the Geotechnical Investigation, Seville Unit 8, prepared by Vinyard & Associates dated June 6, 2003.

Section 1.08: Grantor.

The term "Grantor" shall mean Clearbrook Investments, Inc., a New Mexico corporation, its successors and assigns, who are assigned, in writing, all or part of Grantor's powers and responsibilities for all or a specific area or portion of the Subdivision and who accept such powers and responsibilities in writing. All such assignments and agreements to accept the obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association. Each person or entity named as Grantor in an assignment may exercise the rights of Grantor provided by these Restrictions for the area assigned, but no general power, such as the power to annex, shall be partially assigned, except for an assignment of all rights under this Declaration.

Section 1.09: Improvements.

The term "Improvements" shall include, without limitation, buildings, out-buildings (including sheds and storage buildings), roads, driveways, parking areas, fences, retaining walls, privacy walls or fences, subdivision exterior



walls or fences, stairs, decks, windbreaks, poles, antennas, signs, utility or communication lines installations and equipment (whether above or underground), and any structure and excavation of any type or kind

Section 1.10: Lot.

The term "Lot" shall mean each of the 114 lots designated as Lots 1-P1 through 114-P1 on the Plat together with Improvements located on each such Lot, and any lots subsequently annexed into the Association.

Section 1.11: 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 1.12: Owner.

The term "Owner" shall mean the persons or entities, including Grantor, holding the beneficial ownership of the fee, including the purchaser under a contract of sale, and shall not include persons holding only a security interest or a seller under a contract of sale. 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.

Section 1.13: Perimeter Landscaping.

The term "Perimeter Landscaping" shall mean landscaping to be installed by Grantor along Kayenta Boulevard and Irving Boulevard.

Section 1.14: Plat.

The term "Plat" shall mean all of the real property shown on the Plat and comprising the plat of Seville Subdivision Unit Eight, as recorded in the Bernalillo County, New Mexico real estate records on May 4, 2004, in Book 2004-C, Page 137.

Section 1.15: Subdivision.

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration, including subsequently annexed properties.

Section 1.16: Subdivision Restrictions.

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



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ARTICLE 2  
Property Subject to Subdivision Restrictions

Section 2.01: Initial Development.

All of the property shown on the Plat.

Section 2.02: Subsequent Development.

Grantor may, pursuant to the following provisions of this section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor or other persons with the permission of such other persons. The annexation of any such property shall become effective when Grantor shall have recorded the following:

- a. A declaration, which may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional, different or other limitations, restrictions, covenants and conditions, applicable to such property, including those which may be more or less restrictive, (iii) describe any areas to be included within the Common Areas or Easement Areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to The Restrictions of Seville Subdivision; and
- b. A subdivision plat with respect to the real property described in said declaration.

Upon annexation becoming effective, the property covered by annexation shall become and constitute part of the Association and the Association shall have and shall accept and exercise jurisdiction over such property as a part of the Seville Community.

The annexation declaration, with respect to all or any part of the property described by it, shall provide for any or all of the following which shall become part of these Restrictions as applicable to such property:

- (1) Such new land classifications not then provided in these Restrictions, and such restrictions, covenants and conditions with respect to the use as Grantor deems appropriate for the development of such property; and
- (2) With respect to the land classification provided for by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such annexed property shall not discriminate between Owners.



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ARTICLE 3  
Permitted and Prohibited Uses of Property

Section 3.01: Permitted Uses of Property Within the Subdivision.

a. Improvements and development within the Subdivision shall be limited to residential single family dwellings, either attached or detached having a minimum of 1,000 square feet of heated living area, associated parking, garages, roads and access ways, landscaped areas, and all public or private service and utility facilities related to such uses, including, but not limited to, drainage, sewer, gas, water, electric and communication facilities. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than thirty (30) days.

b. Grantor shall, so long as Grantor is the owner of any Lot, have all of the rights of use set out in the Article entitled, "Limitation of Subdivision Restrictions on Grantor."

Section 3.02: Prohibited Uses of Subdivision.

a. In no event shall any Lot be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with the Subdivision Restrictions.

b. No illegal, noxious or offensive activity shall be carried on within the Subdivision. No light shall be emitted from any Lot which is unreasonably bright to cause unreasonable glare to any residences. No sound shall be emitted on or from any Lot which is unreasonably loud or annoying. No odor shall be emitted from any Lot which is noxious or offensive to others. Nothing shall be done or placed which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in the enjoyment of their dwellings.

c. No signs whatsoever, including, but without limitation, commercial or similar signs, visible from other Lots, shall be erected or maintained upon any Lot, except:

1. Such signs as may be required by legal proceedings or are useful for such proceedings.
2. During the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twenty-four (24) square feet per sign and of the type usually employed by contractors, subcontractors, and tradesmen.
3. Appropriate safety, directional, and identification and safety signs installed by Grantor, the Association, or required by law.
4. Customary "for sale" or "for rent" signs.
5. Political signs as regulated by the City of Albuquerque.



6. Such residential or commercial identification signs as Grantor has the right to maintain, or as are specifically approved by the Board in accordance with the rules adopted by the Board.

d. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boat, or similar facility, structure or recreational equipment shall be kept, placed, or maintained within the Subdivision at any time, unless enclosed within a standard size garage or within the side or rear yard so as not to be visible from any street, or the ground floor of neighboring homes. The provisions of this subsection shall not apply to (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration, (ii) a recreational vehicle parked in the driveway or the street for a period not to exceed 24 hours, and (iii) a guest's use of a recreational vehicle for a period not to exceed one week per ninety (90) days.

e. Any outside clothes lines or other outside clothes drying or airing facilities shall be maintained exclusively within a fenced yard in such a way as not to be visible from streets and the ground floor of neighboring dwellings.

f. No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any land within the Subdivision. There shall be no burning of refuse out of doors. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any person except in conformity with law and approved by the Board.

g. No animals, livestock, horses, insects or poultry of any kind shall be kept, raised, or bred in the Subdivision. Dogs, cats and other household pets in reasonable numbers may be kept, providing they are not kept, raised or bred for commercial or hobby breeding purposes. Such household pets, except cats, must be restrained on a leash or otherwise under the direct control of an individual when in the Subdivision.

h. All exterior spot or directional lighting of any sort, the light source of which is visible from neighboring Lots, shall be approved, in writing, by the Board prior to installation.

i. No exterior antenna of any sort shall be installed or maintained on any Lot or within the Subdivision, except those devices which are erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure or are not visible from the ground level of other Lots. This provision shall remain enforceable even if enforcement action is not commenced within the time limitations otherwise provided by the Subdivision Restrictions.

j. Satellite dishes less than eighteen inches (18") in diameter may be attached to the eaves of the garage, provided they are at least ten feet (10') back from the front of the garage, or in some other location approved by the Committee if required to provide reasonable reception.

k. Reasonable efforts shall be made to screen a mechanical device installed or maintained on the roof or exterior surface of any dwelling if such device would otherwise be visible from the street which the dwelling faces.

l. No vehicles of any type shall be permanently or semipermanently parked in any portion of the Subdivision visible from other Lots for purposes of repairs or reconstruction, or storage. A vehicle shall be deemed parked for storage if it is not driven out of the Subdivision for thirty (30) consecutive days.

m. No trucks or other commercial vehicles shall be kept or maintained in the Subdivision, except within standard size garages, and except where customary or required for the limited purposes of building, repairing, refinishing,



or maintaining the Subdivision or a dwelling, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision.

n. Except temporarily during a construction period, all utility lines, including, but not limited to, electrical, gas, telephone, cable television, and other communications systems shall be underground, except for access ports and aboveground transformers.

o. No portion of the Subdivision shall be used for any purpose or in any manner which would increase the rate at which insurance against loss or damage by fire and the perils covered by extended coverage, bodily injury, property damage liability insurance, covering any other dwelling may be obtained, or cause any other dwelling to be uninsurable or have such insurance canceled or suspended.

p. No vehicles may be parked in the front yard or sideyard of any residence other than on paved surfaces, which paved surfaces have been approved by the Committee prior to construction. No portion of the front yard, or the portions of the side yard visible from the street, shall be used for storage of any kind.

q. Exterior Christmas season lights and decorations shall be removed by the end of January of each year.

r. Exterior trash containers shall be kept in back or side yards, and shall be promptly returned to the back or side yard after trash pick-up day.

t. Not more than one (1) flag may be displayed, whether attached to a residence or separately located on a Lot. The maximum height of a flagpole, whether attached to a residence or separately located on a Lot, shall be 10 feet.

#### Section 3.03: Common Area.

Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area subject to (i) this Declaration, other applicable covenants, or any restrictions which may be contained in the real estate records, and (ii) the right of the Board to adopt rules and regulations for the use and enjoyment of the Common Area. The Association shall have the right and the obligation to maintain the Common Area. There shall be no judicial partition of the Common Area, including improvements and landscaping located thereon. Notwithstanding the foregoing, this section does not prohibit the Board from acquiring and disposing of tangible personal property located within the Common Area.

The Association shall have the right and the obligation to maintain the appearance of the exterior of all Lot walls abutting public right-of-way, otherwise the Lot Owners shall be responsible for maintaining the appearance of the walls. The Lot Owners shall be obligated to maintain the structural integrity of these walls.

#### Section 3.04: Encroachment Easements.

Should minor variations between lot lines as shown on the Plat and actual physical lot boundaries (such as walls, including interior party walls, and fences) occur, either due to original construction, reconstruction, repair or due to the settling, shifting or movement of structures, a valid easement shall exist for the encroaching Improvements for so long as the encroachment exists.



ARTICLE 4  
Perimeter Landscaping

The Grantor shall install landscaping, including applicable water meters, irrigation facilities, controls, plants, trees, rock, gravel, etc., consistent with existing landscaping along Kayenta Boulevard, in all dirt areas between the curb and the perimeter walls along Kayenta Boulevard and Irving Boulevard. Grantor shall maintain the landscaping, including trash removal for one (1) year after complete installation of the landscaping. Thereafter, the Perimeter Landscaping shall be maintained by Curb West, Inc., or its assigns.

ARTICLE 5  
Creation of the Association  
Membership in the Association  
Voting Rights

Section 5.01: 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 5.02: Classes of Membership.

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

Class I. All members shall be Class I members, except the Grantor, and shall be entitled to one (1) vote for each Lot owned. When more than one person or entity is an Owner of any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such Owners determine, but multiple Owners will only be allowed to one (1) vote for each Lot owned.

Class II. The Grantor shall be the only Class II member and shall be entitled to three (3) times the votes as set out under Class I, above, for each Lot owned by Grantor prior to the initial conveyance of such Lot by Grantor. The Class II membership of Grantor shall be converted to Class I member and Grantor's Class II membership shall forever terminate when the total votes in the Class I members, including votes for Lots which have been annexed into the Association, equal or exceed the total votes in Class II membership.



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Section 5.03: 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 5.04: 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 and class of members;
- b. The percentage requirement shall be a percentage of the total voting power of the Association or of the total voting power of the required class or group and not a percentage of the number of members of the Association, class or group; and
- c. In any election held pursuant to the requirements of this Declaration, ballots may be transmitted to Owners in the manner provided for the giving of notice.

ARTICLE 6

Organization, Powers and Duties of the Association

Section 6.01: Organization.

- a. The Association shall be organized as a non-profit corporation 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 inconsistent 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 Committee, if any. The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Committee in favor of any person relying thereon in good faith.



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d. The Board shall be elected at an annual or special meeting not later than one (1) year after the closing of the sale of the first Lot.

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 6.02: 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 Owners. In the exercise of its powers and authority, the Association shall not discriminate in any manner based upon race, color, religion, sex, handicap, family status or national origin.

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

1. Entering into a contract for the furnishings of goods or services or utility services for Common Area or the Association or for all Owners for a term longer than three (3) years with the exception of prepaid casualty or liability policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured;

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; and

b. In fulfilling any of its obligations or duties under the Subdivision Restrictions, including, without limitation, its obligations or duties for the maintenance, repair, operation, or administration of the Common 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 the Common Area and all Improvements located thereon;

2. 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 Owners;

3. 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 Owners;

4. 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;



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5. 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;

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

7. 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;

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

9. To place and maintain upon 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; and

10. To contract and pay for the provision of one or more utility services by Grantor or Grantor's designee or any other utility provider to the Owners and to grant such easements as may be reasonably necessary for such utility services, whether upon the Common Areas, or with the Easement Area.

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 Owners, 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. With respect to the Common Area, the Association shall exercise control over the Common Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof, unless approved by the three-fourths (3/4) vote of the Class I Members except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over, or under any Common Area for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the



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necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing.

e. 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.

f. 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 assessed to the Association, and upon any personal property belonging to or assessed to the Association.

g. 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, after prior written notice and a reasonable opportunity to cure which shall be not less than ten (10) days except in the event of any emergency.

i. The Association shall have the power, but not the duty, to enter upon and maintain, or 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, after prior written notice and a reasonable opportunity to cure which shall be not less than ten (10) days except in the event of an emergency.

Section 6.03: Liability of Members of Board.

No member of the Board shall be personally liable to any Owner, or to any other person, including Grantor, 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 6.04: 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 Owners and for the maintenance and improvement of the Subdivision.

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

c. The Association shall accept from Grantor the Common Areas and maintenance responsibilities in all Easement Areas which shall be deemed transferred to it upon recording of these Restrictions, subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.

d. The Association shall maintain, or provide for the maintenance of, the Common Areas 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 may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

g. The Association shall obtain and maintain in force the following policies of insurance to the extent policies with the required provisions are economically available:

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 two million dollars (\$2,000,000) combined single limit for bodily injury, death and property damage suffered by the public or any Owner and his family, guests, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. 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 nonpayment of premiums) to the Association. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with regard to any policies of liability insurance carried individually by any Owner.



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 7, 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.

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 and the Subdivision Rules.

ARTICLE 7  
Funds, Assessments and Delinquency

Section 7.01: Creation of Lien and Personal Obligation for Assessments.

Grantor 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;
- c. Assessments for capital improvements; and
- d. All other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment and assessment for capital improvements, 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 such 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 7.02: 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 7.03: 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 Class I and Class II 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 Grantor, the maximum maintenance assessment may be increased each year not more than ten percent (10%) without a vote of two-thirds (2/3) of the Class I Members and approval of the Class II Member. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year without a vote of the members.

Section 7.04: Delinquency Assessment.

The Association shall levy a delinquency assessment against any Owner or Owners as a result of whose acts, or failure or refusal to act, or otherwise comply with the Subdivision Restrictions, monies were expended from the operating fund by the Association. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied, or in such installments as the Association shall designate. Prior to the levy of a delinquency assessment the Board shall hold a hearing to determine the validity and amount of the assessment upon at least thirty (30) days notice to the Owner to be assessed at which hearing such Owner shall be given an opportunity to be heard.

Section 7.05: Assessments for Capital Improvements and Indebtedness.

The Association may also levy in any year an assessment for paying or returning, in whole or in part, the cost or proposed cost of acquisition and construction of a described capital improvement (whether the improvements constitute real or personal property) in an amount greater than can be included in the maintenance assessment, provided it has been approved by a two-thirds (2/3) vote of the voting powers of each class of members, which assessment shall be assessed to Owners as provided for in Section 6.03.



Section 7.06: 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 7.07: 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 7.08: 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 7.09: 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 7.10: 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 7.11: 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 7.12: 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 7.13: Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence as to each Lot upon the first day of the month following completion of construction of the Improvements on the Lot. Construction shall be deemed completed upon the dwelling's successful completion of its final inspection by the City of Albuquerque. 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 such time as there are an adequate number of Owners of Lots paying maintenance assessments to carry out the Associations obligations, the Grantor shall contribute cash and/or in kind services necessary to meet the Associations obligations, however the Grantor shall never be obligated to contribute more to the Association than the amount of maintenance assessments against the Grantors Lots if maintenance assessments had commenced on its Lots

ARTICLE 8  
Duties and Responsibilities of Owners

Section 8.01: Owner's Responsibility to Repair.

Each Owner shall be responsible for the maintenance and repair of his dwelling, his Lot and his landscaping.

Section 8.02: Joint Maintenance by Owners.

a. Each wall which is built as part of the original construction of the Subdivision and placed on the dividing line between Houses shall constitute a party wall. Each part of the structure of a building which is shared by more than one dwelling is a common structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply.

b. The cost of reasonable repair, maintenance and replacement of a party wall, common structure or joint utility shall be shared by the Owners who make use of the wall in proportion to such use.

c. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes a party wall or common structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.



d. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's successors in title.

e. Any Owner has the right to raise a party wall to a height of six feet (6') above existing grade with the prior consent of the adjacent owner. The addition shall match the original construction, style and materials and will be at the expense of the Owner raising the wall unless agreed to by the parties.

f. In the event of any dispute arising under the provisions of this Section, the Board shall arbitrate the dispute and its decision shall be final.

Section 8.03: Parking Areas, Vehicles.

For overnight parking, each Owner shall park his vehicle in his garage, except that when there are more vehicles used by the Owner than his garage will accommodate.

Section 8.04: Maintenance of Landscaping.

Each Owner shall maintain the landscaping on his lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, irrigated, trimmed and cut as necessary at regular intervals.

Section 8.05: 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 do likewise.

Section 8.06: Rights of Action.

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 8 of the Subdivision Restrictions.

ARTICLE 9  
Geotechnical Report

Section 9.01: Soil Condition Disclosure.

The Geotechnical Report discloses that there is topsoil of variable depth overlying basalt bedrock. Basalt bedrock is a hard dense dark volcanic rock. Lot Owners desiring to construct in-ground facilities such as swimming pools or hot tubs may encounter inordinate expense in excavating the basalt rock if present on their lots. All Lot Owners should refer to the Geotechnical Report prior to construction of in-ground facilities.

Section 9.02: Watering.

Landscaping adjacent to the home and structures on any lot should be designed and constructed to minimize the potential for wetting of soils supporting the proposed structures. If soils supporting the proposed structures are allowed to increase in moisture content, significant localized settlement could occur.



Trees and shrubs within five (5) feet of structures should be hand watered or watered using controlled drip irrigation. If drip irrigation is used, emitters should discharge no more than one gallon per hour. If grass must be planted within five feet of structures, watering should be carefully controlled to prevent over-watering. Grassed area adjacent to structures should be sloped so that excess irrigation water will run off promptly. Sprinkler lines and drip irrigation mains should be located a minimum of five (5) feet from foundations. All Lot Owners should refer to the Geotechnical Report prior to installation of landscaping.

ARTICLE 10  
Construction and Architectural Control

Section 10.01: Architectural Control Committee.

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

Russ Reece  
Elliott Isenberg  
Cindy King

The Committee shall serve at the pleasure of the Grantor who shall have the right to appoint, reappoint and discharge members of the Committee at will so long as Grantor owns any Lots within the Subdivision, including Lots subsequently annexed into the Subdivision. When Grantor no longer owns any Lots within the Subdivision, or when Grantor relinquishes the right to appoint the Committee, the Board shall appoint the Committee members. If the Board does not exist at such time, the provisions of this Article 10 shall lapse. However, the lapse of Article 10 shall not impair the right of any Owner to enforce the design provisions of these Restrictions.

Section 10.02: 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 [the term Improvement is defined in Section 1.8, and includes but is not limited to fencing and walls] of whatsoever nature; and before anyone shall paint, texture, repaint or retexture 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, dimensions, etc. together with a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surrounding homes;

(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; and



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(iii) 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. The Committee shall have the right to grant a "blanket" approval of Improvements and/or landscaping plans which will be placed on more than one Lot.

(b) 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.

(c) 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.

Section 10.03: Design Guidelines.

The Committee may from time to time adopt or amend design guidelines for approval of Improvements. The Committee may grant variances from its Design Guidelines. The initial Design Guidelines are as follows:

a. Roofs:

All homes shall have one of the following roofs: (i) cement tile of non-reflective, earth tone colors, flat roof with parapet, or (ii) built up roof of earth tone, 20-year minimum composition asphalt shingles. Blue shall not be considered an earth tone. Pitched roofs shall have a pitch no greater than 58% [7 foot vertical rise per 12 foot horizontal]. Some architectural feature to relieve the linearity of a flat roof home is required in order to avoid a box like appearance of the home.



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b. Exterior Finish:

Stucco colors shall be light earth tones ranging from white to medium brown. Dark brown, gray, gold, blue, green or pink stucco finish shall not be permitted. Trim colors shall be compatible with the approved colors for exterior finishing within the subdivision.

c. Walls:

Masonry block walls with a minimum of six (6) courses and an eight inch (8") cap shall be constructed on the side lot lines from the rear lot line to the rear of both houses, and if the location of one house is unknown to the rear of the located house plus ten feet (10'). The face of all yard walls which face public right-of-way shall be painted the standard subdivision wall color as established by the Committee, except the walls which will have been constructed by the Grantor which will include the walls along Kayenta N.W., Irving Boulevard, NW, and adjacent to the Calabacillas Arroyo. Wood gates or wrought iron gates shall be placed in the return walls. Wood gates shall be painted to match the house or stained earthtoned or wood colors.

It is the intention of these Restrictions that the exterior walls of the Subdivision constructed by the Grantor shall be uniform in size, color and appearance. Nothing is to be attached to these walls without the express written consent of the Architectural Control Committee.

d. Garages:

All homes must have at least a two (2) car garage. Garages may not be converted to living space unless a substitute garage is constructed which is approved by the Committee or a garage for at least two (2) cars will remain after the conversion. No more than a three (3) car garage may face the street.

e. Setbacks.

Homes shall have a minimum twenty-foot (20') front yard setback.

f. Landscaping.

(1) The Owner shall be obligated to landscape the front yard of all Lots and the side yard on corner Lots at transfer of title to the first owner occupied or within thirty (30) days issuance of a Certificate of Occupancy by the City of Albuquerque.

(2) The minimum landscaping of the front yard is to consist of one of the following plans:

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a. A minimum of 20% of the front yard is to be sod.



- b. The remainder of the yard is to be landscaped with low and medium-use water use, shrubbery and/or live ground cover plants as established by the City of Albuquerque Water Use Ordinance (see City plant list) designed such that when the landscaping is mature, live material will constitute approximately one-half (2) of the front yard.
- c. Non-living ground cover shall consist of 3/4" crushed gray or tan gravel with filter fabric. Tree bark is not permitted as a ground cover except as permitted in planting beds and tree wells.
- d. At least one, one and one-half inch (1 1/2") deciduous shade tree.
- e. At least five (5) one gallon shrubs or wild flowers.
- f. Steel edging shall be used between the sod and gravel.
- g. Automatic pop-up sprinkler system with integral trickle irrigation for shrubs.

XERISCAPE WITHOUT SOD

- a. One five (5) gallon ornamental tree and a minimum of one of the following: pinon tree, pine tree or palm yucca.
- b. A minimum of five (5) one gallon shrubs or wild flowers.
- c. One boulder with accent of oversized gravel.
- d. Three-fourth inch (3/4") crushed gray or tan gravel with filter fabric.
- e. Automatic trickle irrigation and indicator bubblers.
- f. Tree bark is not permitted as a ground cover except as permitted in planting beds and tree wells.
- g. No lava rock shall cover more than 10 square feet of the yard area.

(3) Three-fourth inch (3/4") crushed gray gravel with filter fabric is to be placed between the curb and the sidewalk at the front of the Lot. Owner is obligated to maintain this strip and keep it free from weeds.

(4) All landscaping shall be in accordance with the ordinance adopted by the City of Albuquerque. Owners are encouraged to implement water conservation measures initiated by the City of Albuquerque.

(5) Fine grading is critical aspect of landscaping. Each Lot has been graded so that all storm water will drain away from the house. It is extremely important that



this drainage pattern be maintained when preparing the landscape design, especially if mounding or berming is proposed. Because of the difficulty and importance of maintaining individual lot drainage patterns and creating natural appearing mounding, it is recommended that a landscape professional be consulted.

(6) Ornamental objects in front and side yards residential landscaping such as drift wood, animal skulls, flamingos, old farm implements, etc., is discouraged and will be permissible only with written approval of the Architectural Control Committee.

(7) Any alterations or modification of the landscaping are to be approved by the Architectural Control Committee.

g. Accessory Structures.

Accessory structures are limited to one per Lot, with the maximum size of eight feet (8') by ten feet (10') with a maximum height of eight feet (8') above grade at the highest point. The color of any accessory structure shall be the same exterior materials as the original structure and shall be maintained to match. Accessory structures are to be placed in the rear yard and in accordance with any zoning requirements by the City of Albuquerque.

Section 10.04: 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 House 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 Grantor, the Association, and all Owners and such purchaser, and mortgagee.

Section 10.05: 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 or development of any property within the Subdivision, or



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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 11  
Protection of Security Interests

Section 11.01: 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 11.02: 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 11.03: 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 11.04: 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 11.05: Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.



ARTICLE 12  
Limitation of Subdivision Restrictions on Grantor

Section 12.01: Limitation of Subdivision Restrictions on Grantor.

Grantor 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 Grantor 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 Grantor or its agents, employees, and contractors from erecting, constructing and maintaining on any part or 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 Grantor from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision;
- d. Prevent Grantor 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.

Section 12.02: Use of Subdivision Name.

Grantor 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 Grantor and Grantor's assigns to use such names of a Corporation and upon request of Grantor, the Association agrees to execute a written consent authorizing Grantor to use the same or similar name which Consent will be filed with the State Corporation Commission.

Section 12.03: Architectural Control.

Improvements by Grantor and declarants to the Subdivision do not require approval of the Committee.

Section 12.04: No Amendment or Repeal.

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



ARTICLE 13  
Miscellaneous Provisions

Section 13.01: Amendment or Repeal: Duration.

a. During the existence of the two (2) class voting structure, 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 seventy-five percent (75%) vote or written consent of the voting power of the Class I membership in the Association and the consent of the Class II Member; 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, and if necessary, by the required percentage of Owners of a particular class of property or Lots.

From and after conversion to a one-class voting structure, these Restrictions may be amended as stated above, provided the vote or written consent is obtained from members representing both a seventy-five percent (75%) majority of the total voting power of the Association and at least fifty-one percent (51%) of the votes of Members, other than Grantor.

At any time during which Grantor is the only owner of property within the Subdivision, Grantor 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, to the Owner and to the Association subject, however, to the right to amend and terminate as provided for in this Article, through December 31, 2051; provided that these Restrictions shall terminate if, within one (1) year prior to December 31, 2051, 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.

Section 13.02: Enforcement: Non-Waiver: No Forfeiture.

a. Except to the extent otherwise expressly provided herein, the Association or 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 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.



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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.

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

e. 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.

f. 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.

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

Section 13.03: 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 13.04: Lot Splitting; Consolidation.

a. No Lot within the Subdivision shall be split unless the Board shall have given its written consent. If no Board exists, the consent of 2/3 of all Owners shall be required.



b. No two or more lots within the Subdivision shall be consolidated into one Lot unless the Board shall have given its written consent. If no Board exists, the consent of 2/3 of all Owners shall be required.

c. Nothing contained in this Section shall apply to the splitting of any Lots by Grantor or the consolidation of two or more Lots into one Lot by Grantor.

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 13.05: 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 13.06: No Partition or Severance of Interests.

There shall be no partition or severance of any Lot, from the Subdivision and the Grantor, 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 13.07: 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:

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.

If to Grantor or to the Association:

8901 Adams, NE, Suite A  
Albuquerque, New Mexico 87113



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

Section 13.08: 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 Owners in proportion to each Owner'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 Owner's rights in such property without the requirement of any express reference thereto.

Section 13.09: Transfer of Common Area.

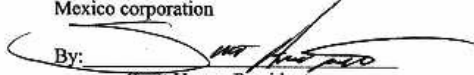
Within one (1) year of the recording of these Restrictions, or one (1) year after recording of any declaration annexing additional property to these Restrictions, the Grantor shall transfer and convey to the Association, and the Association shall accept, the Common Areas, if any. The Common Areas may be subject to any or all of the following exceptions, liens, and encumbrances:

- a. The lien of real property taxes and assessments not delinquent;
- b. Such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;
- c. Such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or Improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;
- d. Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and
- e. Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.




IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

CLEARBROOK INVESTMENTS, INC., a New Mexico corporation

By:   
Scott Henry, President

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

This instrument was acknowledged before me on July 28<sup>th</sup>, 2004, by Scott Henry, President of Clearbrook Investments, Inc., a New Mexico corporation.

  
Notary Public

My Commission Expires   
OFFICIAL SEAL  
ANGELA L. MONTOYA  
Notary Public  
State of New Mexico  
012107

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