

COUNTY

RESTRICTIONS
OF
THE GARDENS ON THE RIO GRANDE SUBDIVISION
UNIT 1
A Declaration of Restrictions, Covenants and Conditions
for the Creation and Maintenance of a
Private Commons Development

PRIOR

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THE GARDENS ON THE RIO GRANDE SUBDIVISION RESTRICTIONS

UNIT 1

A Declaration of Covenants, Conditions, and Restrictions for the
Creation and Maintenance of a Private Commons Development

THIS DECLARATION is made as of May ____, 1999, by _____
_____, with respect to that certain real property situate in
Bernalillo County, New Mexico and more particularly described as follows:

Lots 1-36 Inclusive, The Gardens on Rio Grande Subdivision, Unit I.

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 private commons development on the described real property and for the improvement and protection of the value, desirability and attractiveness of the described real property, and to meet the requirements of the Private Commons Development Regulations, as they exist from time to time (the "PCD Regulations"), as contained within the City of Albuquerque (the "City") Comprehensive Zoning Ordinance (the "Ordinance").

It is the purpose of this Declaration to create a private commons development consisting of Thirty-Six (36) single family lots on a private street with Private Common Area (PCA) 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.


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Section 1.01: Architectural Control Committee.

The terms "Architectural Control Committee" or "Committee" shall mean the architectural control committee created pursuant to Article 8.

Section 1.02: Association.

The term "Association" shall mean THE GARDENS ON THE RIO GRANDE 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.

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: City.

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

Section 1.05: Common Area.

The term "Common Area" shall mean Tracts C1, C2, C3, C4, C5, and C6 as shown on the Plat.

Section 1.06: 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 1.07: 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 1.08: Grantor.

The term "Grantor" shall mean The Gardens, 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



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obligations of Grantor shall be recorded, filed with the Board and placed with the records of the Association.

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 installations (whether above or underground), irrigation wells, and any structure and excavation of any type or kind.

Section 1.10: 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 1.11: 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 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.

Section 1.13: Plat.

The term "Plat" shall mean all of the real property shown on the Plat and comprising the Subdivision Plat of Unit I, The Gardens on the Rio Grande Subdivision, as recorded in the Bernalillo County, New Mexico real estate records on _____, 1998, in Vol. ____ Folio _____.

Section 1.14: Private Common Area.

The term "Private Common Area" shall mean the portions of the Subdivision to be owned by the Association for the common benefit of the Owners to be used for agriculture, landscaping, recreation, or any combination thereof as determined from time to time by the Association. These restrictions create for the benefit of the City negative easements which



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restrict and limit how the Private Common Area can be put to use which restrictions and limitations the City is given the right to enforce. The Private Common Areas are shown and designated on the Plat as Tracts C2, C3, C4, C5, and C6.

Section 1.15: Private Street.

The term "Private Street" shall mean the private streets providing access to the Lots identified on the Plat as Aloysia Lane NW, Cilantro Lane NW, and Laguna Seca Lane NW.

Section 1.16: Site Plan.

The term "Site Plan" or "Site Development Plan" shall mean the site development plan for the Subdivision approved by the City, as amended from time to time, pursuant to the terms of the PCD Regulations.

Section 1.17: Subdivision.

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration. Except where specific distinctions or differences are made, the term "Subdivision" shall include both Unit I and Unit III.

Section 1.18: 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".

ARTICLE 2

Property Subject to Subdivision Restrictions

All of the property shown on the Plat.

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, having a minimum of Two Thousand (2,000) square feet of heated living area, associated parking, garages, roads and access ways, landscaped areas, and


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all public or private service and utility facilities related to such uses, including but limited to, drainage, sewer gas, water, electric and communication facilities.

b.

MAXIMUM BUILDING HEIGHT:

Twenty-Six (26) feet (subject to Architectural Control Committee guidelines and approval).

BUILDING SETBACKS: (Minimum) (Home)

Residence:

Front - 20 feet
Rear - 15 feet
Side - 10 feet
Side street - 20 feet

Courtyard walls - Subject to Architectural Control Committee guidelines and approval.

Front - 15 feet
Rear - 0 feet
Side - 5 feet
Side Street - 15 feet

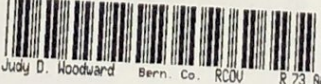
c. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than thirty (30) days.

d. 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.


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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.

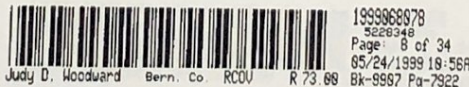
c. No signs whatsoever, including, but without limitation, commercial or similar signs, visible from other Lots, shall be erected or maintained upon any Lot, except (1) such signs as may be required by legal proceedings or are useful for such proceedings; (2) during the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twelve (12) 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; and (5) 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. 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. 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 year.

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, except for the burning of natural materials in connection with land clearance or fire control. 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. All lot owners shall comply with City of Albuquerque ordinances and state laws relating to domestic animals.

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, or satellite dishes, 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 screened so as not to be 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. No mechanical device shall be installed or maintained on the roof or exterior surface of any dwelling if such device is visible from the street which the dwelling faces, or visible from adjoining lots, unless screened or enclosed to the satisfaction of the Committee.

k. No vehicles of any type shall be permanently or semi-permanently parked in any portion of the Subdivision 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.

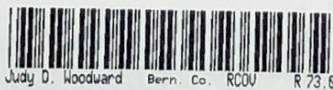
l. No trucks other than pick-up trucks or other commercial vehicles shall be kept or maintained in the Subdivision, except within standard size garages, and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or a dwelling, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision.

m. 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.

n. 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 building to be uninsurable or have such insurance canceled or suspended.

Section 3.03: Private Common Area.

After recording the plat, the PCA shall be conveyed by Grantor to the Association. The Private Common Area shall be reserved by the Association for the benefit of all Owners pursuant to this Declaration and the PCD Regulations, to enhance the value, desirability and

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safety of the Subdivision. No improvements or structures may be constructed upon the Private Common Area except those which are: (a) approved from time to time by the City pursuant to the approved Site Development Plan, and (b) those which are necessary for the operation and maintenance of the Private Common Area or are otherwise permitted by the PCD Regulations. The use of the Private Common Area shall be limited to the agriculture, landscaping, recreation or any combination thereof, or any other uses permitted, from time to time, by the PCD Regulations and approved by the Association. Individual lot owners and the members of the Homeowner's Association shall be jointly and severally liable for maintenance of the PCA.

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

Membership in the Association Voting Rights

Section 4.01: Membership.

a. The Grantor has created a Homeowner's Association for the purposes, and to undertake the powers, duties, and responsibilities described in this Declaration. The Homeowner's Association will function through a non-profit corporate entity known as The Gardens on Rio Grande Subdivision Homeowner's Association, Inc., a New Mexico Non-Profit Corporation.

The owners of all lots of The Gardens on Rio Grande Subdivision, Unit I (36 lots) and The Gardens on Rio Grande Subdivision, Unit III (23 lots), by nature of being an owner, and during the time as such owner remains an owner, shall be a member of 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 have one (1) vote and shall be entitled to cast such 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

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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 [©] 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 5

Organization, Powers and Duties of the Association


Section 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 Grantor, and shall serve at the Grantor's pleasure until December 31, 2000. Thereafter, the Board shall be elected by the members at annual meetings of the Association.


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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: Purpose.

The Association shall have the power to undertake and carry out the following purposes:

a. Take title to and own and operate the common areas described as follows:

Tracts C1 (2.1131 ac.), C2 (1.4573 ac.), C3 (.5539 ac.), C4 (2.5104 ac.), C5 (.5168 ac.) and C6 (.3168 ac.) in Unit I of the Subdivision and Tract A (.9363 ac.) in Unit III of the Subdivision.

b. Maintain and manage such common areas. Maintenance of such common areas shall consist of:

1. As to Tract C 1 and Tract A (private streets, including street lights): maintenance of surface, repair of cracks and potholes and general maintenance to keep the streets in a safe condition; creation of a reserve fund to provide for major repairs or replacement; signage and traffic control devices and maintenance, repair and replacement of such signs and traffic control devices; maintaining street lights, including cost of electricity.
2. As to Tracts C2, C3, C4, C5 and C6 (Private Common Area): grading, seeding, irrigation, fertilizing and mowing such area; landscaping of Tract C5 and maintenance of such landscaping.
3. Operate, maintain, and replace as necessary the private irrigation system serving the Private Commons Areas.

c. Maintain and/or replace the perimeter walls, fences, and gates including the electronic entry gates at Mountain Road and Manhattan Place, and including the landscaping adjoining Unit I along Mountain Road.

Section 5.03: 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-


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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. It is the intent that the powers of the Association are limited to those acts necessary or incidental to undertake and carry out the purposes stated above in Section 5.02. Undertakings, activities and purposes beyond those specifically stated in Section 5.02 may be undertaken only when approved by a 75% majority vote of the membership at a special meeting of the members called for the specific purpose of reviewing and considering such additional undertakings or purposes.

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 Easement Area or the Association for a term longer than three (3) years with the exception of prepaid casualty or liability policies or not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured; and

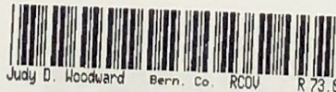
2. Paying compensation to members of the Board or officers for services performed in the conduct of the Association's business provided that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

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 the 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 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 Members;



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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;

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, and 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 of the extent the Association deems necessary; and

9. 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 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.

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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 the Common Area or any part thereof, unless approved by unanimous vote of the 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 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. Any sale of the Private Common Area shall be subject to the PCA Regulations unless released by the City.

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 addressed 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.

h. 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 5.04 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.

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Section 5.05

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 Common Areas subject to the reservations of all easements, licenses and rights to use and the rights of Grantor.

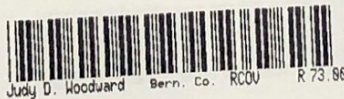
d. The Association shall maintain, or provide for the maintenance of, the Common Areas and all Improvements thereon.

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 agreement 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:

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



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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 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, agents and the City, and shall further expressly cover legal liability arising from lawsuits related to: (i) the Drainage Easement and the Drainage Covenant, and (ii) 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 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 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 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.

h. 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.



i. 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.

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) Special Drainage Fund Assessment; and (d) all other fees or other moneys due to the Association from such Owner.

The maintenance assessment, delinquency assessment and Special Drainage Fund 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.

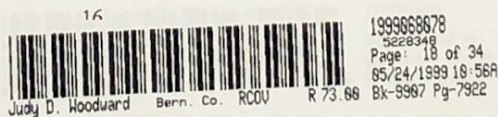
Section 6.02: Operating Fund.

There shall be an operating fund, into which the Association shall deposit all monies paid to it, except for the Special Drainage Maintenance Fund Assessments, 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 budget shall include the estimated costs of maintaining the Drainage Easement improvements notwithstanding the separate Special Drainage Fund. 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 Grantor, 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 unless 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.

f. All maintenance assessments shall be allocated to all lots in Unit I and Unit III as follows:

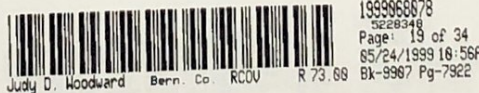
Unit I lots:	2.1053% to each lot x 36 lots =	75.79%
Unit III lots:	1.0526% to each lot x 23 lots =	24.21%
	Total	100%

Section 6.05: 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 6.06: 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 vest 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 6.07: 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 6.08: 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 6.09: 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 6.10: 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.

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Section 6.11: 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 6.12: Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence as 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 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 the second anniversary date of the recording of this Declaration, the Grantor shall make up the shortfall necessary to meet the Association's obligations.

Section 6.13: Special Assessments/Rights of City.

In the event that the Association fails to maintain the Private Common Area in accordance with City Ordinances (the "Maintenance Default"), then the City shall have the following rights:

a. The City may give the Association, and all Owners, written notice of the Maintenance Default (the "Notice");

b. In the event that the Association, or the owners fail to cure the Maintenance Default within thirty (30) days of giving of the Notice, the City shall have the right to enter upon the Private Common Area and perform the maintenance necessary to cure the Maintenance Default (the "City Self Help");

c. The Association, and each Owner, shall be jointly and severally liable to the City for the cost of the City Self Help, together with any other penalties or costs allowed by laws (the "City Reimbursement"). As between the Owners and the Association, the Association shall be primarily liable for the Reimbursement and the City Lien so that the Association can allocate this expense to the individual Lot Owners in accordance with this Article 6. The Association shall indemnify and hold each Lot Owner harmless from the liability for the City Reimbursement and the City Lien in excess of the Lot Owner's share.

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d. In the event that the City Reimbursement is not paid within thirty (30) days of being billed by the City, the City shall have the right to impose a municipal lien against each of the Lots for the City Reimbursement (the "City Lien").

ARTICLE 7
Duties and Responsibilities of Owners

Section 7.01: Owner's Responsibility to Repair.

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

Section 7.02: 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 7.03: 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, trimmed and cut as necessary at regular intervals.

Section 7.04: 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 7.05: 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 7 of the Subdivision Restrictions.

ARTICLE 8
Construction and Architectural Control

Section 8.01: Architectural Control Committee.

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

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William T. Caniglia
2642 Aloysia Lane NW
Albuquerque, NM 87104

Richard L. Gonzales
12005 San Antonio Drive NE
Albuquerque, NM 87122

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 the Grantor owns any lots within the Subdivision. Thereafter, the Committee shall serve at the pleasure of the Board. A majority of the members of the Committee may appoint one member of the Committee to act on and for the Committee.

Section 8.02: Construction of Improvements.

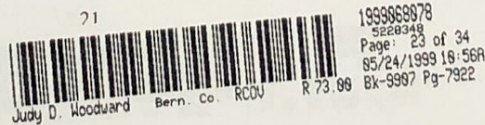
(a) Before anyone shall commence on any Lot within the Subdivision the installation of construction of, remodeling of, addition to, or alteration of any Improvement of whatsoever nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall 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, 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 approving preliminary or tentative plans, the lot owner shall provide the Committee with one set of final plans and specifications.

(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 24 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.

(c) The Committee shall approve or disapprove within five (5) working 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 purpose of design guidelines is to establish a criteria for designing and creating a harmonious neighborhood consistent with the subdivision location in the West Old Town and North Valley community, and to preserve the visual harmony of the Subdivision so that no house, by its design, should disrupt or detract from such visual harmony.

The Committee may from time to time adopt design guidelines for approval of Improvements. These guidelines may be modified, amended or supplemented from time to time,

