



The Orchards at Anderson Heights

Homeowners Association, Inc.

- Articles of Incorporation
- Bylaws
- CCR's
- Forms

Articles of Incorporation

Orchards At Anderson Heights
Homeowners Association, Inc.



OFFICE OF THE
PUBLIC REGULATION COMMISSION

CERTIFICATE OF INCORPORATION

OF

ORCHARDS AT ANDERSON HEIGHTS SUBASSOCIATION, INC.


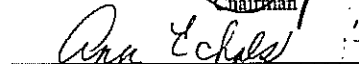
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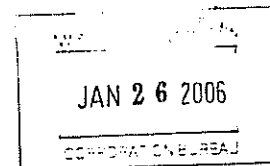
The Public Regulation Commission certifies that the
Articles of Incorporation, duly signed and verified
pursuant to the provisions of the
NONPROFIT CORPORATION ACT
(53-8-1 to 53-8-99 NMSA 1978)
have been received by it & are found to conform to law.

Accordingly, by virtue of the authority vested in it by
law, the Public Regulation Commission issues this
Certificate of Incorporation & attaches hereto, a duplicate
of the Articles of Incorporation.

Dated: JANUARY 26, 2006

In testimony whereof, the Public Regulation of the
State of New Mexico has caused this certificate to be
signed by its Chairman and the seal of said
Commission to affixed at the City of Santa Fe.


Chairman

Bureau Chief



**ARTICLES OF INCORPORATION
OF
ORCHARDS AT ANDERSON HEIGHTS SUBASSOCIATION, INC.**

In compliance with the requirements of the New Mexico Nonprofit Corporation Act, Sections 53-8-1 through 53-8-99, NMSA 1978, as amended, the undersigned, of full age, has this day, for the purpose of forming a non-profit corporation, certified as follows:

ARTICLE 1. NAME

The name of the corporation is Orchards at Anderson Heights Subassociation, Inc., hereafter called the "Association."

ARTICLE 2. PERIOD OF EXISTENCE

The corporation shall have perpetual existence.

ARTICLE 3. PURPOSE AND POWERS OF THE ASSOCIATION

Section 3.1. This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of certain property and improvements within the property described on Exhibit A to the Declaration (as hereinafter defined), and any additions thereto as may hereafter be brought within the jurisdiction of this Association (hereinafter called the "Community"), and to promote the health, safety and welfare of the residents within the Community, and to:

3.1.1. exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions of Orchards at Anderson Heights, hereinafter called the "Declaration," applicable to the Community and recorded or to be recorded in the Office of the Clerk of Bernalillo County, New Mexico, as the same may be amended, clarified and supplemented from time to time, said Declaration being incorporated herein as if set forth at length (terms which are defined in the Declaration shall have the same meanings herein unless otherwise defined);

3.1.2. have and exercise any and all powers, rights and privileges which a corporation organized under the New Mexico Nonprofit Corporation Act by law may now or hereafter have or exercise;

3.1.3. exercise any powers enumerated in these Articles of Incorporation in the Bylaws of the Association or in the Declaration; and

3.1.4. exercise any other powers incidental to the governance and operation of the Association.

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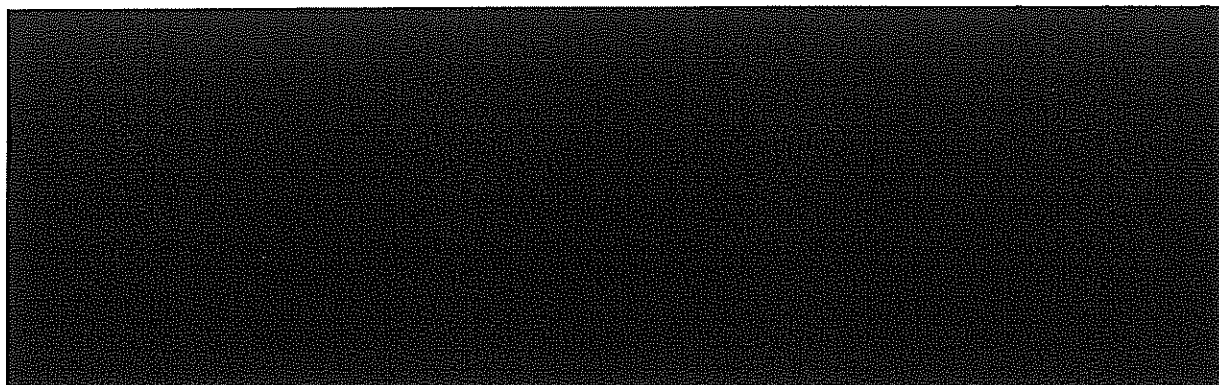
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CORPORATION BUREAU

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NM PUBLIC REG. COMM.
CORPORATION BUREAU



ARTICLE 4. REGISTERED AGENT AND REGISTERED OFFICE IN NEW MEXICO

Canyon Gate Real Estate Services, LLC, whose address is 4110 Wolcott NE, Albuquerque, NM 87109, is hereby appointed the initial registered agent of this Master Association, and such address shall be the registered address of this Master Association.

ARTICLE 5. BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors initially consisting of five (5) directors (but in no instance shall it be less than three (3) directors), except that the Board which shall serve until fifty percent (50%) of the Lots that May Be Included have been conveyed to Owners other than the Declarant, shall consist of three (3) directors. Directors shall be Members which, in the case of any Members who are not natural persons, may include the officers, directors, partners, employees, members, or authorized agents of each such Member. Notwithstanding the foregoing, the number of directors may be changed from time to time as provided in the Bylaws; provided, however, that the number of directors may not be greater than nine (9) nor less than three (3). The names and addresses of the Persons who are to act in the capacity of directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
<u>Robert Coleman</u>	6330 Riverside Plaza Lane NW, Ste. 200 Albuquerque, NM 87120
<u>Don Britt</u>	6330 Riverside Plaza Lane NW, Ste. 200 Albuquerque, NM 87120
<u>Stephen Neel</u>	6330 Riverside Plaza Lane NW, Ste. 200 Albuquerque, NM 87120

The successors to the initial and subsequent Board of Directors shall be appointed or elected in the manner set forth in the Bylaws or the Master Declaration.

ARTICLE 6. NAME AND ADDRESS OF INCORPORATOR

The name and address of the incorporator is:

Melanie Pizzonia
Name of Incorporator

P.O. Box 93488

Albuquerque, NM 87199
Address of Incorporator

ARTICLE 7. MEMBERSHIP

Membership in the Association is as provided in the Declaration.

ARTICLE 8. VOTING RIGHTS

Section 8.1. Members shall have voting rights as more fully provided in the Declaration.

Section 8.2. Cumulative voting is prohibited.

ARTICLE 9. CONFLICT OF PROVISIONS

In case of any conflict between the Master Declaration and the Declaration, the Master Declaration shall control. In case of any conflict between the Declaration and these Articles of Incorporation or the Bylaws of the Association, the Declaration shall control. In the case of any conflict between these Articles of Incorporation and the Bylaws of the Association, these Articles of Incorporation shall control.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of New Mexico, the undersigned, the incorporator of this Association, has executed these Articles of Incorporation this 12th day of January, 2006.

Melanie Pizzonia
Incorporator

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JAN 17 2006

NM PUBLIC REG. DIV.
CORPORATION DIV.

ARTICLE 6. NAME AND ADDRESS OF INCORPORATOR

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Name of Incorporator

P.O. Box 93488

Albuquerque, NM 87199
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Melanie Pizzonia
Incorporator

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JAN 17 2006

NM PUBLIC REG. DIV.
PROFESSIONAL REG.

Bylaws

Orchards At Anderson Heights
Homeowners Association, Inc.

**BYLAWS
OF
ORCHARDS AT ANDERSON HEIGHTS SUBASSOCIATION, INC.**

ARTICLE 1. NAME AND LOCATION

The name of the corporation is Orchards at Anderson Heights Subassociation, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be 6330 Riverside Plaza Lane NW, Suite 200, Albuquerque, NM 87120, but meetings of Members and directors may be held at such places within or outside of the State of New Mexico as may from time to time be designated by the Board of Directors of the Association ("Board of Directors" or "Board").

ARTICLE 2. PURPOSE

The purpose for which the Association is formed is to govern the Community, exercise the rights, power and authority, and fulfill the duties of the Association, as provided in that certain Declaration of Covenants, Conditions and Restrictions of Orchards at Anderson Heights, and all amendments, clarifications and supplements thereto, recorded or to be recorded in the office of the Clerk of Bernalillo County, New Mexico ("Declaration") (terms which are defined in the Declaration shall have the same meanings herein unless otherwise defined), and those certain Articles of Incorporation of Orchards at Anderson Heights Subassociation, Inc., and any amendments thereto, filed in the office of the Public Regulations Division, Corporations Bureau, of the State of New Mexico ("Articles of Incorporation"). All present and future Owners, tenants, occupants, and any other Person who may use any Lot, the Common Elements, or any portion thereof, or any facilities or appurtenances thereto or thereon, in any manner, shall be subject in all respects to the covenants, conditions, restrictions, reservations, easements, regulations, and all other terms and provisions set forth in the Declaration, Articles of Incorporation and these Bylaws. The mere acquisition, rental or occupancy of any Lot, or any portion thereof, shall signify that all terms and provisions of the Declaration, Articles of Incorporation and these Bylaws are accepted, ratified and shall be complied with.

ARTICLE 3. MEETINGS OF MEMBERS

Section 3.1. Annual Meetings. The Association shall each year hold an annual meeting of the Members, the time, date and location of which shall be set from time to time by the Board of Directors. At the annual meeting of the Association, the Members shall elect directors to fill vacancies and may conduct such other business as may properly come before the meeting.

Section 3.2. Special Meetings. Special meetings of the Members may be called at any time by the president or by a majority of the Board of Directors or by Owners having at least twenty percent (20%) of the votes of the Association.

Section 3.3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary of the Association or Person authorized to call the meeting. Not less than ten (10) nor more than fifty (50) days in advance of such meeting, the Person giving such notice shall cause notice of the meeting to be hand delivered or sent prepaid by United States first class mail to the mailing address of each Lot or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, as well as any proposal to remove an officer or director.

Section 3.4. Quorum and Voting Requirements.

3.4.1. A quorum is deemed present throughout any meeting of the Association if Persons entitled to cast twenty percent (20%) of the votes which may be cast on a matter are present, in person or by proxy, at the beginning of the meeting. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

3.4.2. Unless otherwise specifically provided by the Declaration, the Articles of Incorporation, these Bylaws or by statute, action on all matters coming before a meeting of Members at which a proper quorum is in attendance, in person or by proxy, is approved if the votes cast favoring such action exceed the votes cast opposing such action.

Section 3.5. Proxies.

3.5.1. If only one (1) of the multiple Owners of a Lot is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners of a Lot are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Declaration expressly provides otherwise. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Lot.

3.5.2. The vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one Person, any Owner of such Lot may register protest to the casting of a vote by any other Owner of such Lot through a duly executed proxy; but each Lot shall only have one (1) vote allocated to it, as provided in the Declaration. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the Person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice.

ARTICLE 4. BOARD OF DIRECTORS - SELECTION - TERM OF OFFICE

Section 4.1. Number. The affairs of this Association shall be managed by a Board of Directors of five (5) directors, except that the Board which shall serve until fifty percent (50%) of the Lots that May Be Included have been conveyed to Owners other than a Declarant shall consist of three (3) directors. Directors shall be Members and in the case of any Members who are not natural persons, may include the officers, directors, partners, members, employees, or authorized agents of each such Member. Notwithstanding the foregoing, the number of directors may be changed from time to time by a vote of the Board of Directors; provided, however that, except as provided above, the number of directors may not be greater than nine (9) nor less than three (3).

Section 4.2. Power to Appoint or Elect. During the 75% Control Period, the Declarant shall have the power to appoint the directors as more fully described in the Declaration. Subject to the Declarant's right to appoint, the Members shall elect the directors.

Section 4.3. Term of Office.

4.3.1. Any director appointed by the Declarant during the 75% Control Period shall serve until such director's appointed or elected successor takes office.

4.3.2. After the time at which 25% of the Lots that May Be Included have been conveyed to Owners other than the Declarant, a meeting of the Members shall be held at which the Members (other than the Declarant) shall elect a sufficient number of directors (other than those appointed by the Declarant in Section 4.3.1 above) to constitute at least one (1) but not less than twenty-five percent (25%) of the Board, provided that the Declarant reserves the right to appoint a majority of the Board. These directors shall serve until the next annual meeting that is held by the Association.

4.3.3. After the time at which 50% of the Lots that May Be Included have been conveyed to Owners other than the Declarant, a meeting of the Members shall be held at which the Members (other than the Declarant) shall elect a sufficient number of directors (other than those appointed by the Declarant in Section 4.3.1 above) to constitute at least one (1) but not less than thirty three and one-third percent (33 1/3%) of the Board, provided that the Declarant reserves the right to appoint a majority of the Board. These directors shall serve until the next annual meeting that is held by the Association.

4.3.4. After termination of the 75% Control Period, a meeting of the Members shall be held at which the Members shall elect directors to replace the Declarant-appointed directors, and all elected directors shall serve until the next annual meeting that is held by the Association.

4.3.5. At the first annual meeting of the Members after termination of the 75% Control Period, the three (3) persons running to become a director who receive the most votes shall each be elected as a director for a term of (2) years and the next two (2) top vote-getters shall each be elected as a director for a term of one (1) year. Then, at each annual meeting thereafter the Members shall elect the same number of directors as there are directors whose terms expire at the time of such election, to each serve for a term of two (2) years.

4.3.6. Notwithstanding anything contained in the Sections 4.3.1 through 4.3.5 above, any director may at any time resign, be removed (subject to Section 4.4 of these Bylaws), or otherwise be disqualified to serve.

Section 4.4. Removal. The Members, by a vote of sixty-seven percent (67%) of the Association votes cast by Members present in person or by proxy at any meeting of the Owners at which a quorum is present, may remove any director with or without cause, other than a director appointed by the Declarant. Declarant may at any time remove, and appoint the successor of, any director who was appointed by the Declarant. In the event of death, resignation or removal of a director, his or her successor shall be selected by a majority of the remaining directors, whether or not such remaining directors constitute a quorum, and shall serve for the unexpired term of the director being replaced; provided, however, that the Declarant may appoint the successor of any director who served in such capacity as a result of being appointed by the Declarant.

Section 4.5. Compensation. No director shall receive compensation for any service rendered to the Association as a director. However any director may be reimbursed for actual expenses incurred in the performance of the director's duties.

ARTICLE 5. NOMINATION AND ELECTION OF DIRECTORS

Section 5.1. Nomination. Nomination for election to the Board of Directors may be made by a nominating committee if such a committee is appointed, from time to time, by the Board of Directors. Nominations may also be made from the floor at any Member meeting.

Section 5.2. Election. Election to the Board of Directors shall be by secret written ballot if any Member so requests or in the discretion of the Board of Directors. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration.

ARTICLE 6. MEETINGS OF THE BOARD OF DIRECTORS

Section 6.1. Regular Meetings. Regular meetings of the Board of Directors shall be held not less often than quarterly, without notice, at such place and hour as may be fixed from time to time by the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

Section 6.3. Quorum; Actions of Board of Directors. A quorum at any meeting of the Board of Directors is present if directors entitled to cast fifty-one percent (51%) of the votes on the Board of Directors are present. Every act or decision done or made by a majority of a quorum of the directors present, in person or by proxy granted to another director (as more specifically set forth below), at a duly held meeting shall be regarded as the act of the Board of Directors.

Section 6.4. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting if each and every director in writing ("Written Vote(s)") does either of the following:

6.4.1. Votes for such action; or

6.4.2. Votes against such action or abstains from voting and waives the right to demand that a meeting be held.

Action under this Section is valid only if the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the directors then in office were present and voted. For any action taken under this Section to be effective the Association must receive the Written Votes described in subsections 6.4.1 and 6.4.2 signed and not revoked. Written Votes may be received by the Association by facsimile. A director may revoke such director's Written Vote by a writing signed and dated describing the action and stating that the director's prior vote is revoked ("Revocation") if such Revocation is received by the Association before the last

Written Vote necessary to effect the action is received by the Association. The Association shall keep the Written Votes and any Revocations with the minutes of the meetings of the Board of Directors.

Section 6.5. Proxies. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a director may be deemed to be present and to vote if the director has granted a signed written proxy to another director who is present at the meeting, authorizing the other director to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy. Except as provided in this Section and in Section 6.4 hereof, directors may not vote or otherwise act by proxy.

ARTICLE 7. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1. Limitation on Powers and Duties. The Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate this Community, or to elect directors or determine the qualifications, powers and duties, but the Board of Directors may fill vacancies in its membership for the unexpired portion of any term.

Section 7.2. Powers. The Board of Directors shall have power to:

7.2.1. adopt and publish rules and regulations governing the use of the Lots, the Common Elements, the Community, or any portion thereof, and any facilities thereon and the personal conduct of the Members, their guests and other Persons thereon, and to establish penalties for the infraction thereof;

7.2.2. suspend the voting rights of any Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of these Bylaws or published Association rules and regulations;

7.2.3. enter into, make, perform or enforce contracts, licenses, leases and agreements of every kind and description;

7.2.4. borrow money;

7.2.5. provide for direct payment of assessments to the Association from Owners' checking, credit or other accounts;

7.2.6. exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

7.2.7. retain the services of a manager, an independent contractor(s), or such employees as they deem appropriate and prescribe their duties;

7.2.8. cooperate with the Master Association, any other community association and/or any district, as provided in the Declaration; and

7.2.9. exercise any and all powers granted by the New Mexico Nonprofit Corporation Act and/or by the Declaration.

Section 7.3. Duties. It shall be the duty of the Board of Directors to:

7.3.1. cause to be kept a complete record of all its acts and corporate affairs and present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Owners entitled to cast at least one-fourth (1/4) of the votes at such meeting;

7.3.2. supervise all officers, agents, and employees of the Association, and see that their duties are properly performed;

7.3.3. as more fully provided in the Declaration, to:

7.3.3.1. determine the amount of the annual assessment against each Lot, from time to time; and

7.3.3.2. foreclose the lien against any Lot for which assessments are not paid within such time as may be determined by the Board of Directors from time to time, and/or bring an action at law against the Owner personally obligated to pay the same;

7.3.4. issue, or cause an appropriate officer or authorized agent to issue, upon demand by any Person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment as to all Persons who rely thereon in good faith;

7.3.5. procure and maintain insurance, as more fully provided in the Declaration;

7.3.6. provide for maintenance, repair and/or reconstruction of the Common Elements, other property, and Improvements, as more fully provided in the Governing Documents; and

7.3.7. keep financial records sufficiently detailed to enable the Association to prove statements of unpaid assessments. Subject to Article 12 of these Bylaws, all financial and other records shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

Any of the aforesaid duties may be delegated by the Board of Directors to any other Person(s) or to the Association's managing agent.

ARTICLE 8. RIGHTS OF THE ASSOCIATION

The Association may exercise any and all rights or privileges given to it under the Declaration, the Articles of Incorporation or these Bylaws, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied therefrom or reasonably necessary to effectuate any such right or privilege.

ARTICLE 9. OFFICERS AND THEIR DUTIES

Section 9.1. Enumeration of Offices. The officers of this Association shall be a president, a secretary, a treasurer, and such other offices as the Board may from time to time by resolution create.

Section 9.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 9.3. Term. The officers of this Association shall be elected annually by the Board of Directors and each officer who is elected subsequent to the first annual meeting of the Association after termination of the 75% Control Period shall hold office for one (1) year or until such officer's duly-elected successor takes office, whichever occurs earlier; except that any officer may at any time resign, be removed, or otherwise be disqualified to serve.

Section 9.4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 9.5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 9.6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 9.7. Multiple Offices. The same individual may simultaneously hold two (2) or more offices, subject to any applicable requirements or limitations contained in the Declaration, Articles of Incorporation, these Bylaws or applicable law.

Section 9.8. Duties. The duties of the president, vice-president (if any), secretary and treasurer, which are delegable to other persons or the managing agent, are as follows:

9.8.1. President: The president shall preside at all meetings of the Board of Directors and Members; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; shall co-sign or authorize a designated agent to co-sign promissory notes and checks of the Association; and shall perform such other duties as required by the Board.

9.8.2. Vice-President: The vice-president, if any, shall act in the place and stead of the president in the event of the president's absence, inability, or refusal to act, and shall perform such other duties as required by the Board.

9.8.3. Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the names of the Members together with their addresses; shall prepare, execute, certify and record

amendments to the Declaration on behalf of the Association; shall keep a record of the names and addresses of Security Interest Holders furnished to the Association by the Members; and shall perform such other duties as required by the Board.

9.8.4. Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign or authorize a designated agent to sign promissory notes and checks of the Association; shall keep proper books of account; and shall perform such other duties as required by the Board.

The president, vice president, secretary or treasurer of the Association may prepare, execute, certify, file and/or record amendments to the Declaration, the Articles of Incorporation or these Bylaws, on behalf of the Association, except that the Board of Directors may authorize other officers to do so.

ARTICLE 10. COMMITTEES

After automatic termination of the Special Declarant Rights as provided in Section 1.24 of the Declaration, the Board of Directors shall appoint an Architectural Review Committee. In addition, the Board of Directors may appoint a nominating committee and may appoint other committee(s) as it deems appropriate, from time to time (except that the Architectural Review Committee also has such powers as are provided in the Master Declaration), in carrying out its purposes.

ARTICLE 11. BOOKS AND RECORDS

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of the Declaration, and the Articles of Incorporation, these Bylaws, rules and regulations, books, records and financial statements of the Association, except that: the Board of Directors may at any time(s), prior or subsequent to a request for inspection, determine that items are confidential and should not be made available; and the Owners or other parties conducting such inspections shall pay all costs associated therewith. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

Declaration of Covenants, Conditions and Restrictions

Orchards At Anderson Heights
Homeowners Association, Inc.

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS

TABLE OF CONTENTS

ARTICLE 1.	DEFINITIONS	1
Section 1.1.	Agencies.....	1
Section 1.2.	Allocated Interests.....	1
Section 1.3.	Annexable Area.	2
Section 1.4.	Architectural Review Committee or Committee.	2
Section 1.5.	Association.....	2
Section 1.6.	Board of Directors or Board.....	2
Section 1.7.	Common Elements.....	2
Section 1.8.	Community.	2
Section 1.9.	Declarant.	2
Section 1.10.	Declaration.....	2
Section 1.11.	Development Rights.....	3
Section 1.12.	Improvements.....	3
Section 1.13.	Initially Unoccupied Lots.....	3
Section 1.14.	Lot.	4
Section 1.15.	Lots that May Be Included.....	4
Section 1.16.	Master Association.....	4
Section 1.17.	Master Declaration.....	4
Section 1.18.	Member.....	4
Section 1.19.	Owner.....	4
Section 1.20.	Person.....	4
Section 1.21.	Security Interest.	5
Section 1.22.	Security Interest Holder.	5
Section 1.23.	75% Control Period.....	5
Section 1.24.	Special Declarant Rights.....	5
ARTICLE 2.	MEMBERSHIP AND VOTING RIGHTS	6
Section 2.1.	Membership.	6
Section 2.2.	Voting Rights.....	6
ARTICLE 3.	ASSOCIATION	6
Section 3.1.	Association.....	6
Section 3.2.	Board of Directors.....	6
Section 3.3.	Association Powers.....	6
Section 3.4.	Bylaws.....	8
Section 3.5.	Authority of Board of Directors.	8
Section 3.6.	Authority of Declarant During 75% Control Period.....	8
Section 3.7.	Termination of 75% Control Period.	8
Section 3.8.	Association Books and Records.....	8
Section 3.9.	Rules and Regulations.....	9

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Page: 1 of 50
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Page: 1 of 49
11/07/2005 03:08P
R 105.00 Bk-R106 Pg-5487
Bern. Co. DEC
Mary Herrera

Section 3.10.	Enforcement.....	9
Section 3.11.	Delegation to a Subassociation.....	10
Section 3.12.	Cooperation with the Master Association, any Other Community Associations, and/or any Districts.....	10
Section 3.13.	Management Agreements and Other Contracts.....	10
Section 3.14.	Merger.....	10
Section 3.15.	Occupants Bound.....	11
Section 3.16.	Limitation of Liability.....	11
Section 3.17.	Indemnification.....	11
ARTICLE 4.	ASSESSMENTS.....	11
Section 4.1.	Personal Obligation for Assessments.....	11
Section 4.2.	Purpose of Assessments.....	12
Section 4.3.	Initial Annual Assessment.....	12
Section 4.4.	Rate of Annual and Special Assessments.....	12
Section 4.5.	Date of Commencement of Annual Assessments.....	14
Section 4.6.	Special Assessments.....	14
Section 4.7.	Notice and Quorum for Any Special Assessments.....	14
Section 4.8.	Assessments/Charges for Services to Separate Areas of Community.....	14
Section 4.9.	Lien for Assessments; Enforcement; Priority.....	15
Section 4.10.	Certificate of Status of Assessments.....	16
Section 4.11.	Surplus Funds.....	16
Section 4.12.	Working Capital Fund.....	16
Section 4.13.	Other Charges.....	16
Section 4.14.	Assessments for Misconduct.....	17
ARTICLE 5.	ARCHITECTURAL REVIEW COMMITTEE	17
Section 5.1.	Architectural Review Committee Approval.....	17
Section 5.2.	Requirement for Approval by Governmental Entities.....	17
Section 5.3.	Declarant's Exemption.....	17
ARTICLE 6.	INSURANCE.....	17
Section 6.1.	Insurance.....	17
Section 6.2.	General Provisions of Insurance Policies.....	18
Section 6.3.	Deductibles.....	18
Section 6.4.	Payment of Insurance Proceeds.....	18
Section 6.5.	Association Insurance as Primary Coverage.....	19
Section 6.6.	Acceptable Insurance Companies.....	19
Section 6.7.	Insurance to be Maintained by Owners.....	19
ARTICLE 7.	DAMAGE OR DESTRUCTION.....	19
Section 7.1.	Damage or Destruction.....	19
Section 7.2.	Lots.....	20

ARTICLE 8.	MAINTENANCE.....	20
Section 8.1.	General.....	20
Section 8.2.	Association's Right to Repair, Maintain and Replace.....	21
Section 8.3.	Maintenance of and Non-Interference with Grade and Drainage; Some Irrigation Recommendations Around Foundations and Slabs.	21
Section 8.4.	Acts or Omissions.....	22
Section 8.5.	Soils Conditions.....	22
ARTICLE 9.	EASEMENTS.....	22
Section 9.1.	Other Easements.	22
Section 9.2.	Right of Entry.....	23
Section 9.3.	Access Easement.....	23
Section 9.4.	Easement for Water Use and Flood Control.	23
Section 9.5.	Utilities Easement.	24
Section 9.6.	Easement for Encroachments.....	24
Section 9.7.	Drainage Easement.	24
Section 9.8.	Easement for Unannexed Property.....	25
ARTICLE 10.	RESTRICTIONS	25
Section 10.1.	General Plan; Restrictions Imposed.....	25
Section 10.2.	Compliance with Master Declaration and Architectural Review Committee.....	26
Section 10.3.	Residential Use; Professional or Home Occupation.	26
Section 10.4.	Household Pets.....	26
Section 10.5.	Temporary Structures; Unsightly Conditions.	27
Section 10.6.	Exterior Holiday Decorations.	27
Section 10.7.	Miscellaneous Improvements.	27
Section 10.8.	Traffic and Parking; Vehicular Storage and Repairs.	29
Section 10.9.	Nuisances.	30
Section 10.10.	No Hazardous Activities; No Hazardous Materials or Chemicals.....	30
Section 10.11.	No Annoying Lights, Sounds or Odors.....	31
Section 10.12.	Restrictions on Trash and Materials.	31
Section 10.13.	Lots to be Maintained.	31
Section 10.14.	Leases.....	31
Section 10.15.	Landscaping of Lots.....	32
ARTICLE 11.	PROPERTY RIGHTS IN THE COMMON ELEMENTS	32
Section 11.1.	Owners' Easements of Enjoyment.....	32
Section 11.2.	Extent of Owners' Easements.....	33
Section 11.3.	Use of Common Elements by Declarant.	33
Section 11.4.	Delegation of Use.....	34
Section 11.5.	Payment of Taxes or Insurance by Security Interest Holders.	34
Section 11.6.	Conveyance or Encumbrance of Common Elements.....	34
Section 11.7.	Designation of Common Elements.	34
Section 11.8.	Duty to Accept Property and Facilities Transferred by Declarant.	34

2005097387
 6354535
 Page: 3 of 50
 01/18/2006 09:27A
 R 107.00 Bk-A110 Pg-7343
 Bern. Co. DEC
 Mary Herrera

ARTICLE 12.	Annexation; Withdrawal; replatting	34
Section 12.1.	Annexation; Withdrawal.....	34
Section 12.2.	Subdivision or Replatting of Lots.....	36
Section 12.3.	Declarant's Use.....	36
ARTICLE 13.	GENERAL PROVISIONS.....	37
Section 13.1.	Duration, Revocation, Amendment and Termination of Declaration.....	37
Section 13.2.	HUD or VA Approval.....	37
Section 13.3.	Enforcement.....	38
Section 13.4.	Minor Violations of Setback Restrictions.....	38
Section 13.5.	Liability for Failure of Association to Maintain an Action.....	38
Section 13.6.	Limitation on Liability.....	38
Section 13.7.	No Representations, Guaranties or Warranties.....	39
Section 13.8.	Disclaimer Regarding Safety.....	39
Section 13.9.	Notice of Sale or Transfer of Title.....	39
Section 13.10.	Registration of Mailing Address.....	39
Section 13.11.	Transfer of Special Declarant Rights.....	40
Section 13.12.	Eminent Domain.....	40
Section 13.13.	No Partition.....	40
Section 13.14.	Waiver.....	40
Section 13.15.	Headings.....	40
Section 13.16.	Gender.....	41
Section 13.17.	Run with Land; Binding Upon Successors.....	41
Section 13.18.	Severability.....	41
Section 13.19.	Conflict of Provisions.....	41
Exhibit A - Community		
Exhibit B - Common Elements		
Exhibit C - Part of Annexable Area		



 2006007387
 6394935
 Page: 4 of 50
 01/18/2006 09:27R
 Mary Herrera Bern. Co. DEC R 107.00 Bk-A110 Pg-7343



 2005165937
 6361969
 Page: 4 of 49
 11/07/2005 03:08P
 Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS ("Declaration") is made and entered into by KB HOME NEW MEXICO INC., a New Mexico corporation, its parent, affiliates and subsidiaries ("Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property situated in the County of Bernalillo, State of New Mexico, which is described on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, the property described on the attached Exhibit A may be subject to that certain Master Declaration of Covenants, Conditions and Restrictions of Anderson Heights recorded in the office of the Clerk and Recorder of Bernalillo County, State of New Mexico, as amended and supplemented (hereinafter, the "Master Declaration"); and

WHEREAS, the Declarant desires to subject and place upon the property described on the attached Exhibit A certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other provisions.

NOW, THEREFORE, Declarant hereby declares that a plat which includes the property described on the attached Exhibit A has been recorded and that all of the real property described on the attached Exhibit A shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein.

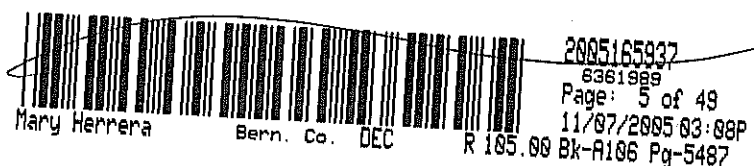
ARTICLE 1. DEFINITIONS

Section 1.1. *Agencies.*

"Agencies" means the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development, including the Federal Housing Administration (HUD), the Veterans Administration (VA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by any of such entities.

Section 1.2. *Allocated Interests.*

"Allocated Interests" means the assessment liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Community from time to time.



Section 1.3. *Annexable Area.*

"Annexable Area" means the property described on Exhibit C attached hereto and incorporated herein by this reference plus such additional real estate from such locations as the Declarant may elect in its sole discretion.

Section 1.4. *Architectural Review Committee or Committee.*

"Architectural Review Committee" or "Committee" means the committee which is appointed pursuant to the Master Declaration.

Section 1.5. *Association.*

"Association" means Orchards at Anderson Heights Subassociation, Inc., its successors and assigns, a community association as provided in the Act. The Association constitutes a Subassociation as defined in the Master Declaration.

Section 1.6. *Board of Directors or Board.*

"Board of Directors" or "Board" means the body, regardless of name, designated in this Declaration, the Articles of Incorporation and the Bylaws of the Association, to act on behalf of the Association.

Section 1.7. *Common Elements.*

"Common Elements" means any property owned by the Association (which may include one or more platted lots), other than a Lot or publicly-dedicated property. The Common Elements at the time of recordation of this Declaration is described on Exhibit B attached hereto and incorporated herein by this reference.

Section 1.8. *Community.*

"Community" means the real estate and the Improvements thereon described on the attached Exhibit A, as supplemented and amended from time to time.

Section 1.9. *Declarant.*

"Declarant" means KB Home New Mexico Inc., a New Mexico corporation, its parent, affiliates and subsidiaries, and any other Person(s) to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds)

Section 1.10. *Declaration.*

"Declaration" means this Declaration of Covenants, Conditions and Restrictions of Orchards at Anderson Heights and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also

2005087387
6354935
Page: 6 of 50
01/18/2006 09:27A
R 107.00 BK-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

Mary Herrera
Bern. Co. DEC
2005165937
6354935
Page: 6 of 49
11/07/2005 03:08P
R 105.00 BK-A106 Pg-5487

including, but not limited to, maps and plats. This Declaration is a Supplemental Declaration as defined in the Master Declaration.

Section 1.11. *Development Rights.*

"Development Rights" means the following rights or combination of rights hereby reserved by the Declarant as provided in this Declaration:

- 1.11.1. add real estate to this Community;
- 1.11.2. create Lots and/or Common Elements;
- 1.11.3. subdivide or replat any property; and
- 1.11.4. withdraw property from this Community.

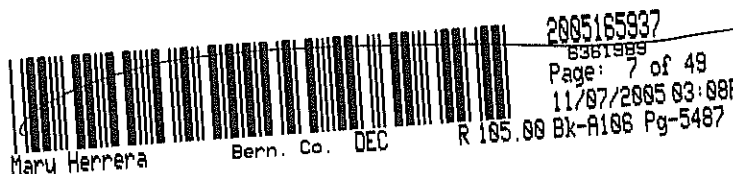
The Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. The Declarant's right to exercise Development Rights shall terminate automatically as provided in Section 1.24 of this Declaration (Special Declarant Rights).

Section 1.12. *Improvements.*

"Improvements" means all structures now or hereafter located on a Lot or the Common Elements, improvements to any such structures, and any other improvements made to a Lot or the Common Elements, and any appurtenances thereto or components thereof of every type or kind, including all landscaping features. The foregoing include, without limitation, buildings, outbuildings (including storage sheds), painting or other finish materials on any visible structure, additions and/or expansions, garages, carports, driveways, swimming pools, tennis courts, stairs, walkways, patios/decks and patio/deck covers, awnings, hot tubs, jacuzzis and/or saunas, antennas, satellite dishes, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, play yards (including swing sets and jungle gyms), exterior tanks, solar collectors, fences (including dog runs), screening walls, retaining walls, sprinkler systems, fountains, ponds, hedges, windbreaks, gardens, trees, shrubs, flowers, vegetables, sod, and other plantings, rock, gravel, bark, mulch and any other landscaping components, signs, exterior decorations, mailboxes, and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 (Architectural Review Committee) hereof, and only in such Article, the word "exterior" shall be inserted immediately preceding the two uses of the word "improvements" in the first sentence of this Section.

Section 1.13. *Initially Unoccupied Lots.*

"Initially Unoccupied Lots" means only those Lots which have not been conveyed to the initial Owner other than the Declarant.



Section 1.14. *Lot.*

"Lot" means each platted lot that is now or hereafter included in the real property described on the attached Exhibit A, as the same may be subdivided or replatted from time to time (and "Lot" shall include all lots created as a result of such subdivision or replatting), as well as all other lots then or thereafter within any real property annexed to this Declaration, with the exception of the Common Elements and any publicly dedicated property. Each Lot shall constitute a "unit", and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

Section 1.15. *Lots that May Be Included.*

"Lots that May Be Included" means four hundred seventy-five (475) Lots, which shall be the maximum number of Lots that may be subject to this Declaration, including those Lots which may be included if all of the Annexable Area is annexed to this Declaration. However, the aforesaid number of Lots that May Be Included is not a representation or a guarantee as to the actual number of Lots that will ultimately be included in the Community.

Section 1.16. *Master Association.*

"Master Association" means Anderson Heights Master Association, Inc., its successors and assigns.

Section 1.17. *Master Declaration.*

"Master Declaration" means Master Declaration of Covenants, Conditions and Restrictions of Anderson Heights, recorded in the office of the Clerk and Recorder of Bernalillo County, New Mexico, including any supplements and amendments.

Section 1.18. *Member.*

"Member" means all Owners of a Lot collectively, their heirs, personal representatives, successors and assigns.

Section 1.19. *Owner.*

"Owner" means each fee simple title holder of a Lot, including without limitation, the Declarant or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation. There may be more than one Owner of a Lot.

Section 1.20. *Person.*

"Person" means a natural person, a corporation, a limited liability company, a partnership, an association, a trust, a joint venture, or any other entity recognized under the laws of the State of New Mexico or any combination thereof.

200507387
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Page: 8 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487
2005165937
6361989
Page: 8 of 49
11/07/2005 03:08P

Section 1.21. *Security Interest.*

"Security Interest" means an interest in real estate or personal property created by contract or conveyance, which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.10 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, pursuant to Section 6.2 of this Declaration (General Provisions of Insurance Policies), "Security Interest" shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the County in which such property is located show the Administrator as having the record title to the Lot.

Section 1.22. *Security Interest Holder.*

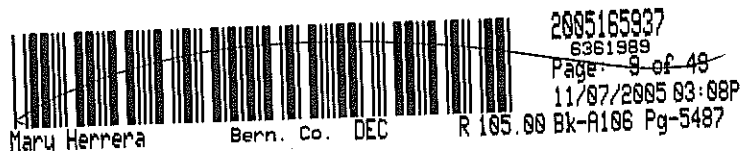
"Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.10 of this Declaration (Certificate of Status of Assessments) and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.2 of this Declaration (General Provisions of Insurance Policies), the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records in the County in which such property is located show the said Administrator as having the record title to the Lot), or any successor to the interest of any such Person under such Security Interest.

Section 1.23. *75% Control Period.*

"75% Control Period" means a length of time expiring seven (7) years after initial recording of this Declaration in the County in which the property described on the attached Exhibit A is located or one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant, whichever first occurs.

Section 1.24. *Special Declarant Rights.*

"Special Declarant Rights" means the following rights, which rights are hereby reserved for the benefit of the Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Elements; to make the Community subject to one or more other associations; to merge or consolidate with a Community of the same form of ownership; or to appoint or remove any director or officer of the Association during the 75% Control Period. All of the Special Declarant Rights may be exercised by the Declarant with respect



to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically at such time as the Declarant no longer own any portion of the property described on the attached Exhibits A and C.

ARTICLE 2. MEMBERSHIP AND VOTING RIGHTS

Section 2.1. *Membership.*

The Association shall have one (1) class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot. Each Lot shall have one (1) membership and there is only one (1) Member per Lot, even if multiple Owners own the Lot.

Section 2.2. *Voting Rights.*

Each Member shall be entitled to one (1) vote for each Lot owned, except that no votes allocated to a Lot owned by the Association may be cast. The maximum number of votes that may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association.

ARTICLE 3. ASSOCIATION

Section 3.1. *Association.*

The Association has been or will be formed as a New Mexico non-profit corporation under the New Mexico Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws.

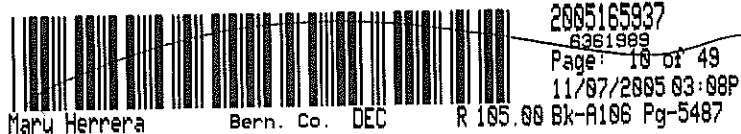
Section 3.2. *Board of Directors.*

The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Association's Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to one or more committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association.

Section 3.3. *Association Powers.*

Subject to the rights, powers and authority reserved by and conferred upon the Declarant pursuant to this Declaration, the Association will serve as the governing body of the Orchards at Anderson Heights and shall have the powers and duties set forth in this Declaration and the Bylaws. The Association may:

3.3.1. adopt and enforce the Bylaws, and make and enforce the rules and regulations, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;



3.3.2. adopt and amend budgets for revenues, expenditures and reserves and assess and collect any assessments and any other amounts due from Members or others to the Association;

3.3.3. hire and terminate managing agents and other employees, agents and independent contractors;

3.3.4. after termination or surrender of the Declarant's right to appoint the Architectural Review Committee, appoint the members of the Architectural Review Committee;

3.3.5. exercise all of the enforcement powers set forth elsewhere in this Declaration;

3.3.6. make contracts and incur liabilities in accordance with the current Association budget;

3.3.7. borrow funds to cover Association expenditures and pledge the Association assets as security therefor;

3.3.8. regulate the use, maintenance, repair, replacement and modification of the Common Elements;

3.3.9. cause additional improvements to be made as a part of the Common Elements;

3.3.10. acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Lots);

3.3.11. grant easements, leases, licenses, and concessions on, under, across, through or over the Common Elements;

3.3.12. impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for any services provided to Members;

3.3.13. impose charges for late payment of assessments, recover reasonable attorneys' fees and other legal costs for collection of assessments and other actions (regardless of whether or not suit was initiated), and levy reasonable fines for violations of this Declaration, the Bylaws or the rules and regulations;

3.3.14. impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid assessments;

3.3.15. provide for the indemnification of its officers and directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance;

3.3.16. assign its right to future income, including the right to receive assessments;

2005007387
6361989
Page: 11 of 50
01/18/2006 09:27A
R 107.00 BK-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 11 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 BK-A106 Pg-5487

3.3.17. exercise any other powers expressly conferred by this Declaration, the Bylaws, or reasonably implied from or necessary to effectuate such powers;

3.3.18. except as prohibited by law, exercise all other powers that may be exercised in the State of New Mexico by a nonprofit corporation;

3.3.19. exercise all powers delegated to the Association by any Subassociation; and

3.3.20. exercise any other powers necessary and proper for the governance and operation of the Association.

Section 3.4. *Bylaws.*

The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration. The Bylaws may include, without limitation, provisions regarding the voting rights of the Members, the appointment or election of the Board, and the appointment or election of officers of the Association.

Section 3.5. *Authority of Board of Directors.*

Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, or by law.

Section 3.6. *Authority of Declarant During 75% Control Period.*

Except as otherwise provided in this Article, during the 75% Control Period, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and remove all officers and directors which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and directors before termination of the 75% Control Period; but, in that event, the Declarant may require, for the duration of the 75% Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 3.7. *Termination of 75% Control Period.*

After termination of the 75% Control Period, the Members shall elect at least a majority of the Board of Directors who must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board of Directors shall elect the officers.

Section 3.8. *Association Books and Records.*

The Association shall make available to Owners, prospective purchasers, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records and financial

200507387
6361989
Page: 12 of 50
01/18/2006 09:27A
R 107.00 Bk-R110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 12 of 49
11/07/2005 03:08P
R 105.00 Bk-R106 Pg-5487
Mary Herrera Bern. Co. DEC

statements of the Association, except that: the Board of Directors may at any time(s) determine that items are confidential and should not be made available – e.g., to protect the privacy or confidentiality of Owners, complainants, applicants or others; and the Persons accessing such documents shall pay all costs associated therewith. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

Section 3.9. Rules and Regulations.

Rules and regulations concerning and governing the Lots, Common Elements, this Community and/or rights-of-way, may be adopted, amended, repealed and enforced from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations. The rules and regulations may state procedural requirements, interpretations and applications of the provisions of this Declaration, including without limitation, blanket requirements, blanket interpretations, and blanket applications. By way of example and not by way of limitation, such rules and regulations may state that "reasonable" as used in Section 10.4 of this Declaration (Household Pets), means a specified number of pets. Any rules and regulations that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration, the Master Declaration all provisions thereof, and any rules and regulations adopted by the Master Association.

Section 3.10. Enforcement.

Enforcement by the Association under this Section 3.10 shall be in addition to, and not in substitution of, Section 13.3 (Enforcement), below.

3.10.1. After notice and an opportunity to be heard, the Association, acting through the Board or any authorized agent, may: (a) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws or the rules and regulations; (b) exercise self-help to cure any violations of this Declaration, the Bylaws or the rules and regulations that a Member fails or refuses to cure; and (c) suspend any services it provides to any Member who is more than 15 days delinquent in paying any assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws or the rules and regulations, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs.

3.10.2. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws or the rules and regulations constitute a waiver of the Association's right to later enforce such provision or any other provision, covenant, restriction or rule.

2006007387
6361989
Page: 13 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 13 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

Section 3.11. *Delegation to a Subassociation.*

Without limiting any of the Association's other rights of delegation, the Association may delegate, exclusively or non-exclusively, any powers, rights or obligations under this Declaration to the Master Association or other Person(s), to the extent permitted by law.

Section 3.12. *Cooperation with the Master Association, any Other Community Associations, and/or any Districts.*

The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with the Master Association, any other community association(s), and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association and/or the Master Association, any other community association(s) and/or any district(s), to collect assessments, other charges, or other amounts which may be due to the Master Association, any other community association(s) and/or any district(s) and to permit any such entity to collect assessments, other charges or other amounts which may be due to the Association, or to otherwise cooperate with the Master Association, any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, may be shared or apportioned between the Association and/or the Master Association, any other community association(s) and/or any district(s), as the Board of Directors may determine in its discretion from time to time.

Section 3.13. *Management Agreements and Other Contracts.*

Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the 75% Control Period shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one or more Security Interests (and HUD or VA require such approval).

Section 3.14. *Merger.*

The Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.24 of this Declaration (Special Declarant Rights).

2006007387
6364935
Page: 14 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 14 of 49
11/07/2005 03:08P
R 105.00 Bk-A108 Pg-5487
Bern. Co. DEC
Mary Herrera

Section 3.15. *Occupants Bound.*

All provisions of this Declaration, the Bylaws and the rules and regulations shall also apply to all occupants of any Lot and to any tenant, agent, employee, customer, contractor, licensee, guest or invitee of any Owner or of such tenant or occupant. Every Owner shall cause all occupants of its Lot and any tenant, agent, employee, customer, contractor, licensee, guest or invitee to comply with this Declaration, the Bylaws and the rules and regulations of the Association.

Section 3.16. *Limitation of Liability.*

There shall be no personal liability, either direct or indirect, of any director or officer of the Association to the Association or its Members, for monetary damages for any breach(es) of duty as a director or officer; except that this provision shall not eliminate the liability of a director or officer, to the Association or its Members, for monetary damages for any breach, act, omission or transaction as to which the New Mexico Nonprofit Corporation Act (as in effect from time to time) expressly prohibits the elimination of liability. This provision is effective on the date of incorporation of the Association, and shall not eliminate or limit the liability of a director or officer to the Association or to its Members for monetary damages for any act or omission occurring prior to such date. However, this provision shall not limit the rights of directors or officers of the Association for indemnification or other assistance from the Association. Any repeal or modification of the foregoing provisions of this Article by the Members, or any repeal or modification of the provisions of the New Mexico Nonprofit Corporation Act which permits the limitation or elimination of liability of directors or officers, shall not adversely affect any elimination of liability, or any right or protection, for any breach, act, omission or transaction that occurred prior to the time of such repeal or modification.

Section 3.17. *Indemnification*

The Association shall indemnify its directors and officers as now or hereafter required by the New Mexico Nonprofit Corporation Act, and may indemnify its directors, officers, and employees as otherwise permitted by law or as the Board may deem appropriate from time to time.

ARTICLE 4. ASSESSMENTS

Section 4.1. *Personal Obligation for Assessments.*

Each Owner of a Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each amount, together with interest, late charges, costs, and reasonable attorney's fees, shall be the personal obligation of the Person(s) who

20060807387
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Page: 15 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

was the Owner of such Lot at the time when the amount became due. However, the personal obligation for delinquent amounts (including assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 4.2. *Purpose of Assessments.*

The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law. assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

Section 4.3. *Initial Annual Assessment.*

The amount of the annual assessment against each Lot shall be in accordance with a budget adopted by the Board of Directors, and such amount shall be exclusive of any amounts due to the Master Association, any district and/or any other Person or entity. However, the rate of assessments paid with respect to the Initially Unoccupied Lots shall be less than that paid with respect to the other Lots, as provided in the next Section. The annual assessments shall be due and payable in monthly installments, in advance, on the first day of each month, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Board of Directors determines in its discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last payment due.

Section 4.4. *Rate of Annual and Special Assessments.*

4.4.1. Annual and special assessments shall be set by the Board of Directors (except as provided in Section 4.4.2 below), shall be sufficient to meet the expected needs of the Association and shall, except as hereinafter provided, be apportioned among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual assessments and special assessments against the Initially Unoccupied Lots shall be set at a lower rate than the rate of annual assessments and special assessments against other Lots, because the Initially Unoccupied Lots receive and benefit from fewer services funded by such assessments than the other Lots. The Initially Unoccupied Lots shall pay annual and special assessments at the rate of twenty-five percent (25%) of any annual assessment or special assessment charged to Lots other than the Initially Unoccupied Lots. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis and for the payment of insurance deductibles.

4.4.2. Prior to the expiration of each calendar year, the Board will approve and distribute to each Owner a proposed budget for the Association's operations during the next ensuing year. If such budget requires an annual assessment for the next ensuing year having an aggregate increase in the annual assessment of not more than twenty percent (20%)

2006007387
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Page: 16 of 50
01/18/2006 09:27A
R 107.00 Bk-A116 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
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Page: 16 of 49
11/07/2005 03:00P
Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

(exclusive of Utility Charges as provided below), the annual assessment for the next ensuing year as provided in such budget will take effect at the commencement of the next ensuing year without further notice to any Owner. If such budget proposes an annual assessment for the next ensuing year with an aggregate increase in the annual assessment then in effect of more than twenty percent (20%), the Board must call a membership meeting as stated herein for consideration of such proposed increase. In computing the applicable percentage of the new annual assessment for the above determination, any increase due to an increase in utility charges, including charges for wet and dry utilities, including but not limited to water, sewer, rubbish, gas, electricity, phone services, cable services, high speed data communication services, and satellite services (collectively the "Utility Charges"), shall not be included in such 20% limitation, but shall be automatically passed on as part of the assessment. Unless a majority of the total votes cast by Members, in person or by proxy, at such meeting of the Members duly called and convened, veto such increase, then such annual assessment as approved by the Board will take effect at the commencement of the next ensuing calendar year without notice to any Owner. If the proposed assessment increase of more than 20% (exclusive of Utility Charges) is vetoed by the Members, as provided above, then the amount of the annual assessment then in effect shall continue until such time as an increase in the annual assessment not greater than 20% is approved by the Board or the Members do not veto an increase of more than 20% in the amount of the annual assessment as provided above. In the absence of any valid action by the Board or the Members to the contrary prior to the commencement of any calendar year, as provided above, the annual assessment then in effect will automatically continue for the ensuing calendar year increased only by any increase in the Utility Charges.

4.4.3. The Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future assessments due from the Declarant. However, on or before the termination of the 75% Control Period, any such advances which have not been credited against assessments due from the Declarant shall be assumed as obligations of the Association to be repaid to Declarant within a reasonable amount of time and without interest accruing thereon. Further, for the period in which any such advances not repaid to the Declarant, the same shall continue to constitute advances against future assessments due from the Declarant to the Association until conveyance by the Declarant of all of the property described on the attached Exhibit C. If the Declarant elects in its discretion to pay any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amount(s) in the future. The word "assessments," as used in this subsection, includes interest, late charges, fines, costs, attorneys' fees, and all other amounts that are provided for in this Declaration.

After Association assessments commence, Declarant's obligations for assessments may be satisfied in the form of cash or by "in kind" contributions of materials or services (or any combination thereof) to the Association.

Section 4.5. *Date of Commencement of Annual Assessments.*

The annual assessments shall commence at such time as the Board of Directors may determine in its discretion.

2006007387
6394935
Page: 17 of 50
81/18/2006 09:27A
R 107.00 Bk-A116 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361988
Page: 17 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

Section 4.6. *Special Assessments.*

In addition to the annual assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of a quorum of the Association's votes cast by Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital Improvement upon any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or replacement of any damaged or destroyed Improvements located on said real property, or for the funding of any deficit incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration, except that the rate of special assessments against Initially Unoccupied Lots shall be set as provided in subsection 4.4.1 of this Declaration. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 4.7 (Notice and Quorum for Any Special Assessments) hereof. Notwithstanding the foregoing, special assessments levied during the 75% Control Period may not be used for the purpose of constructing capital Improvements.

Section 4.7. *Notice and Quorum for Any Special Assessments.*

Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 (Special Assessments) hereof shall be sent to all Members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the Association votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 4.8. *Assessments/Charges for Services to Separate Areas of Community.*

The Association may, at any time from time to time, provide services to any area(s) (containing less than all of the Lots) in the Community. If such services are not funded by the Association's annual or special assessments, then such services shall be provided, if at all, pursuant to a written document that includes a statement and terms for payment of the costs, fees and expenses for such services. Services which may be provided by the Association pursuant to this Section may include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions to such area, such as trash removal; (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; (e) the procurement of insurance for Owners; and (f) the collection of charges for use of facilities.

200607387
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Page: 18 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 18 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

Section 4.9. *Lien for Assessments; Enforcement; Priority.*

4.9.1. The Association shall have a lien against each Lot to secure payment of delinquent assessments. Amounts levied against any Lot or the Owner(s) thereof (including amounts for fines imposed against the Lot's Owner(s), fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration) and any other amounts are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time as such items become due and unpaid. If an assessment is payable in installments, each unpaid installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

4.9.2. The Board of Directors or managing agent of the Association is hereby authorized to act to assess and collect assessments and any other amounts due under this Declaration, by giving written notice of amounts levied against any Lot or the Owner(s) thereof to the Owner(s) of any Lot. Such notice shall provide the time period within which the Owner shall make payment to Board of Directors or managing agent of the Association, and the address to which such payment shall be made or directed.

4.9.3. As to any Lot upon which an assessment has been levied, such assessment is deemed delinquent upon failure of the Owner(s) of any Lot to timely make payment thereof. Thereupon, the Board of Directors or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Lot, and a description of the Lot. The costs and expenses relative to any such lien filing or recording thereof shall be added to the assessments for the Lot against which it is filed and collected as part and parcel thereof.

4.9.4. Any delinquent assessment shall bear interest computed from the due date of such assessment at the rate of fifteen percent (15%) per annum or such other lawful rate set by the Board, as well as late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees.

4.9.5. The Association's lien may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of New Mexico. In addition, the Association may bring an action at law against the Owner(s) personally obligated to pay the same. If a judgment or decree is obtained, including without limitation, in a foreclosure action, such judgment or decree shall include reasonable attorney's fees to be fixed by the court, together with the costs of the action and interest, and may include late charges as set forth herein.

4.9.6. No Owner may be exempt from liability for payment of assessments by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of the Lot against which the assessments are made, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

200607387
6361988
Page 19 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361988
Page 19 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

Any lien arising from this Declaration shall be subordinate to the lien of any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Lot or unit that is recorded in the records of the office of the Clerk of Bernalillo County, New Mexico and that has priority of record over all other recorded liens except such liens, governmental or otherwise, that are superior by operation of state or federal law.

Section 4.10. *Certificate of Status of Assessments.*

The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within a reasonable period after receipt of the request, and the information provided therein is binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 4.11. *Surplus Funds.*

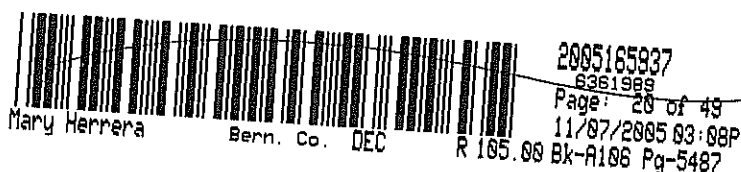
Any surplus funds of the Association remaining after payment of or provision for Association expenses, and any prepayment of or provision for reserves, shall be retained for use by the Association and need not be paid to the Owners or credited to them.

Section 4.12. *Working Capital Fund.*

At the time of any transfer of any Lot (by any circumstance whatsoever, including but not limited to purchase, devise, or foreclosure) the Association shall require the new Owner (other than the Declarant) of any Lot, to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual assessment (regardless of whether or not annual assessments have commenced as provided in Section 4.5 hereof (Date of Commencement of Annual Assessments)). Said contribution shall be due from such new Owner and payable to the Association at the time of closing on the transfer, and shall be for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due and shall be in addition to any amounts due to the Master Association, any district and/or any other Person or entity.

Section 4.13. *Other Charges.*

The Association may levy and assess charges, costs and fees for matters such as, but not limited to, the following, in such reasonable amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; return checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Lot; notices and demand letters; and other charges incurred by the Association for or on behalf of any Owner(s). All such charges, costs and fees shall be in addition to the assessments



levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments.

Section 4.14. *Assessments for Misconduct.*

If any Association expense is caused by or arises out of the misconduct of any Owner or such Owner's tenant, agent, guest or invitee, as determined by the Board of Directors, the Association may assess such Association expense (including, without limitation, any attorneys fees and expenses relative thereto) exclusively against such Owner and his or her Lot.

ARTICLE 5. ARCHITECTURAL REVIEW COMMITTEE

Section 5.1. *Architectural Review Committee Approval.*

As more fully provided in the Master Declaration and except as otherwise provided therein, no Improvement shall be constructed, erected, placed, planted, applied or installed on any Lot, until the same has been submitted to and approved by the Architectural Review Committee in accordance with the requirements of the Master Association and/or the Architectural Review Committee.

Section 5.2. Requirement for Approval by Governmental Entities.

In addition to the foregoing, the construction, erection, addition, deletion, change or installation of any Improvement shall require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the City of Albuquerque, New Mexico, if required, shall be a precondition to commencement of any construction of, alteration of, addition to or change in any Improvement.

Section 5.3. Declarant's Exemption.

Notwithstanding anything to the contrary, the Declarant shall be exempt from the provisions of this Article (including without limitation, architectural and design requirements, architectural and design restrictions, and architectural and design guidelines), except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (as provided in Section 5.2 hereof).

ARTICLE 6. INSURANCE

Section 6.1. *Insurance.*

The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, which insurance shall include, without limitation, property insurance, commercial general liability insurance and fidelity coverage. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of

2006007387
6394935
Page: 21 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 21 of 49
11/07/2005 03:08P
Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

the Association, worker's compensation insurance, and may maintain insurance on such other property and/or against such other risks as the Board of Directors may elect, in its discretion from time to time.

Section 6.2. *General Provisions of Insurance Policies.*

All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. Additionally, each Owner and each Security Interest Holder shall be beneficiaries of the policy in a percentage equal to the Owner's Allocated Interest. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until thirty (30) days prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. Further, all policies of insurance carried by the Association shall also contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 6.3. *Deductibles.*

The Association may adopt and establish written non-discriminatory policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, which falls within the deductible portion of a policy that is carried by the Association, may be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed, may be apportioned among the Persons sharing in a joint duty of repair and maintenance, may be partly or wholly borne by the Association, and/or may be shared by any such Person(s) and the Association, at the election of the Board of Directors. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of one or more Owners. Upon said determination by the Association, any such loss, or any portion thereof, may be assessed to the Owner(s) in question and the Association may collect such amount(s) from said Owner(s) in the same manner as any assessment.

Section 6.4. *Payment of Insurance Proceeds.*

Any loss covered by an insurance policy described in Section 6.1 (Insurance), must be adjusted with the Association, but the insurance proceeds for that loss may be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 7.1 of this Declaration (Damage or Destruction), the proceeds must be disbursed first for the repair or replacement of the damaged property; and the

2006007387
6364935
Page: 22 of 50
01/18/2006 09:27A
R 107.00 Bk-A118 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 22 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or replaced and any budget or reserve deficit has been funded, or unless the Community is terminated.

Section 6.5. *Association Insurance as Primary Coverage.*

If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 6.6. *Acceptable Insurance Companies.*

Each insurance policy purchased by the Association must be written by an insurance carrier that is authorized by law to do business in the State of New Mexico. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 6.7. *Insurance to be Maintained by Owners.*

An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Lot and the Improvements thereon, which provides replacement cost coverage, as well as on personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

ARTICLE 7. DAMAGE OR DESTRUCTION

Section 7.1. *Damage or Destruction.*

Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

7.1.1.1. the Community is terminated; or

7.1.1.2. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

7.1.1.3. members casting sixty-seven percent (67%) of the Association votes, including the vote for each Lot that has a dwelling unit that will not be rebuilt, vote not to rebuild; or

7.1.1.4. prior to conveyance of any Lot to a Person other than the Declarant, a Security Interest Holder of a Security Interest on the damaged portion of the Community rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the assessment liability of all the Lots. If the Members vote not to rebuild any Lot, that Lot's Allocated Interest is automatically reallocated upon the Association vote as if the Lot had been condemned and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 7.2. *Lots.*

Except as otherwise provided in this Section, any damage to or destruction of any structure located on a Lot shall be promptly repaired and replaced by the Owner(s) thereof. "Repaired and replaced," as used in this Section, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Lot do not commence repair or replacement activities within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee then, in accordance with and subject to the provisions of Section 8.2 of this Declaration (Association's Right to Repair, Maintain and Replace), the Association may, in its reasonable discretion, enter upon the Lot for the purpose of completing such repair and replacement.

ARTICLE 8. MAINTENANCE

Section 8.1. *General.*

8.1.1. Maintenance, repair and replacement of the Common Elements and all Improvements located thereon, those portions of publicly-dedicated rights of way adjacent to the perimeter of the Community, and any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association (unless

such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity). Without limiting the generality of the foregoing, the Association shall maintain, repair and replace the private streets and gated areas within the Community, and shall be empowered to adopt any rules and regulations concerning the private streets. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this subsection shall, subject to Section 8.4 of this Declaration (Acts or Omissions), be collected by the Association as assessments and paid as Association expenses. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time, including without limitation, any publicly dedicated property and Improvements located thereon.

8.1.2. Except as provided above, the Owner of each Lot shall provide all maintenance, repair and replacement of such Lot and of the Improvements thereon.

Section 8.2. *Association's Right to Repair, Maintain and Replace.*

In the event any Owner(s) shall fail to perform his maintenance, repair and/or replacement obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner(s) by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. However, no such notice shall be required in emergency situations. The cost of such maintenance, repair and/or replacement shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 of this Declaration, including without limitation, interest, late charges, attorney's fees and lien rights.

Section 8.3. *Maintenance of and Non-Interference with Grade and Drainage; Some Irrigation Recommendations Around Foundations and Slabs.*

8.3.1. Each Owner shall maintain the grading on his Lot (including grading around the building foundation), and the Association shall maintain the grading on the Common Elements, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their, heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and approval in accordance with Article 5 of the Master Declaration (Architectural Review Committee), and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. For purposes of this Section, "established drainage" is defined as the drainage that exists at the time final grading by the Declarant is completed.

200507387
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Page: 25 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 25 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

8.3.2. The Owner of a Lot should not plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, within five (5) feet of the foundation of the dwelling unit or any slab on the Lot. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Lot should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls and slabs.

Section 8.4. *Acts or Omissions.*

Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of or within any property for which the Association has an obligation to maintain, repair or replace, any Lot, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, replacement or expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such Persons under the laws of the State of New Mexico; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 4 of this Declaration. A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association.

Section 8.5. *Soils Conditions*

Declarant, the Association and/or the Committee make no warranty or representation concerning the soil and/or the characteristics or structural stability of the Community. Each Owner shall assess the sufficiency of the load-bearing capacity of his or her Lot and the effect of possible soil subsidence upon the structures intended to be placed thereon that are, in part, dependent upon the condition of the underlying soils, footings, foundation and structural design and plans used for construction on the Lot. In no event shall Declarant, the Association and/or the Committee be liable should any of the footings, foundation or structural design or plan of the structures placed on the property (including, but not limited to, structures erected by Owners) prove insufficient to prevent structural distress or damage to such structures that is caused by soil subsidence, settlement, collapse or expansion.

ARTICLE 9. EASEMENTS

Section 9.1. *Other Easements.*

In addition to any other easements that may be granted or reserved, including without limitation those contained elsewhere in this Declaration, the following Sections describe easements to which the Community is or may be subject.

Section 9.2. *Right of Entry.*

Declarant reserves for the Association an easement for the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, or to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Bylaws and the rules and regulations. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Architectural Review Committee, and for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested to do so by the Board, but shall not authorize entry into any residence without permission of the occupant, except by emergency personnel acting in their official capacities.

Section 9.3. *Access Easement.*

Declarant hereby reserves to itself and its successors, the Association and the Owners, such easements upon, across, over, under and through the property (including, without limitation, Common Elements and Lots) as may reasonably be necessary for exercise of any Special Declarant Right, performance of any of Declarant's or Association's rights or obligations hereunder, and the showing of any of the property to prospective purchasers. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on or to the Common Elements, any other property, or any Lot, the party responsible for the damage or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. The rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Lot; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Lot may be made at any time provided that the Owner(s) or occupant(s) of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any dwelling unit located on a Lot shall not be subject to the easements provided for in this Section. In addition, and without limiting the easements reserved in this Section, Declarant reserves for itself and the Association an easement over the property (including, without limitation, Common Elements and Lots) for the purpose of Declarant's use and enjoyment of any water or water rights appurtenant to or associated with the property, which water or water rights include, without limitation, all adjudicated, non-adjudicated, decreed, non-decreed, tributary, non-tributary and not non-tributary water rights, as well as ditch rights and well permits owned by the Declarant or the Association.

Section 9.4. *Easement for Water Use and Flood Control.*

The Declarant hereby reserves to itself and its successors, assigns and designees, and grants to the Association and its successors, assigns and designees, a perpetual non-exclusive right and easement (but not the obligation) to enter upon any ponds, streams, drainage ditches, irrigation ditches, and wetlands located within the property (including, without limitation, Common Elements and Lots) to: (a) provide water for the irrigation of any of the Common Elements; (b) alter drainage and water flow; (c) construct, maintain and repair any bulkhead, wall, dam or other structure retaining water; (d) develop, maintain, rehabilitate, restore, repair, or protect wetlands, ponds or waterways; and (e) remove trash and other debris therefrom. Such easement shall include

2005007387
6394935
Page: 27 of 50
01/18/2006 09:27A
R 107.00 BK-R110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 27 of 49
11/07/2005 03:08P
Mary Herrera Bern. Co. DEC R 105.00 BK-R106 Pg-5487

an access easement upon, across, over, under and through the property, to the extent reasonably necessary to exercise rights granted under this Section, and in order to maintain and landscape the slopes and banks pertaining to such ponds, streams and wetlands. To the extent the exercise of such easement is anticipated to materially diminish the value of or unreasonably interfere with the use of any Lot, the consent of the Owner(s) of such Lot shall be required before such exercise. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, snowmelt, or other natural occurrences.

Section 9.5. *Utilities Easement.*

The Declarant hereby reserves to itself and its successors, assigns and designees (including, without limitation and if so designated, the Association and its successors, assigns and designees) a perpetual non-exclusive easement upon, across, over and under all of the Lots (but not under structures), and the Common Elements, to the extent reasonably necessary for the purposes of installation, monitoring, maintaining, operating, replacement, repair of all utilities, including, but not limited to, water, sewer, storm and surface water drainage, gas, telephone, electricity, computer cable, and television antennas or cable or satellite television systems, and other devices for sending or receiving data and/or other electronic signals, if any. By virtue of this blanket easement it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements, and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.24 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) or encumbrances on the Common Elements.

Section 9.6. *Easement for Encroachments.*

To the extent that any Improvement on a Lot, or on the Common Elements, encroaches on any other Lot or Common Elements, a valid easement for the encroachment exists.

Section 9.7. *Drainage Easement.*

Declarant hereby reserves, to itself and to the Association, easements for drainage and drainage facilities across the ten (10) rear and ten (10) side feet of each Lot; provided, however, that if the primary structure on a Lot is located upon any of the areas described in this sentence, then such easement shall be reduced in width to the width of the distance from the nearest Lot line to the exterior wall of such primary structure that is nearest to such Lot line. Except for the primary structures located on a Lot as provided in the preceding sentence; no Improvements shall be placed or permitted to remain on any Lot, nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the

200507387
6361989
Page: 28 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 28 of 49
11/07/2005 03:08P
Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

Association the right to enter in and upon each five (5) foot rear and side yard drainage easements, at any time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically terminate at such time as the Special Declarant Rights terminate as provided in Section 1.24 of this Declaration (Special Declarant Rights), at which time said reserved right shall vest solely in the Association.

Section 9.8. *Easement for Unannexed Property.*

The Declarant hereby reserves, for the use and benefit of the Annexable Area, a non-exclusive, perpetual easement and right-of-way for pedestrian and vehicular access, ingress and egress, on, over and across the roads, driveways, streets, sidewalks, accessways and similar Common Elements, now or hereafter constructed, erected, installed or located in or on the Community, and on, over, across and under the Common Elements for utilities and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities Improvements that may now or hereafter serve the Annexable Area or any portion thereof (herein the "Annexable Area Easement"). By virtue of this Annexable Area Easement, the Declarant generally intends to provide for pedestrian and vehicular access and for utilities services, to those portion(s) of the Annexable Area which have not been included, from time to time, in the Community. Hence, the Annexable Area Easement shall be in effect for each portion of the Annexable Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Annexable Area at such time as both of the following have occurred with respect to such portion of the Annexable Area: annexation of such portion of the Annexable Area to this Declaration pursuant to the aforesaid Section; and expiration of the Declarant's right to withdraw such portion of the Annexable Area from this Declaration.

ARTICLE 10. RESTRICTIONS

Section 10.1. *General Plan; Restrictions Imposed.*

It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Community. This Community is subject to any documents and instruments of record (including without limitation recorded easements, licenses, and other matters of record), as well as all provisions of any plat and/or final development plan applicable to the Community or any portion thereof. In addition, the Declarant declares that the Community (including all of the Lots therein) shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. With respect to this Article 10 and any and all restrictions set forth herein, use of the term "Owner" shall also refer to and include any family member of an Owner, as well as their agents, guests, invitees, licensees, and tenants.

2006097387
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Page: 28 of 50
01/18/2006 09:27A
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Bern. Co. DEC
Mary Herrera

Mary Herrera
Bern. Co. DEC
2005165937
6364989
Page: 29 of 49
11/07/2005 03:08P
R 105.00 Bk-R106 Pg-5487

Section 10.2. *Compliance with Master Declaration and Architectural Review Committee.*

All Owners and any other Persons who reside upon or use any portion of the Community shall comply with all terms and provisions of the Master Declaration, Articles of Incorporation, Bylaws and rules and regulations of the Master Association, as the same may be promulgated, enacted, adopted, amended, interpreted, repealed, reenacted, and enforced, from time to time. Without limiting the generality of the foregoing, all Persons shall comply with all submission, processing, and other requirements of the Architectural Review Committee; and all terms and provisions of the Master Declaration, Articles of Incorporation, Bylaws and rules and regulations of the Master Association are incorporated herein as if set forth in full.

Section 10.3. *Residential Use; Professional or Home Occupation.*

Except as otherwise provided in this Declaration, Lots shall be for residential use only, including those uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

10.3.1. the business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

10.3.2. the existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

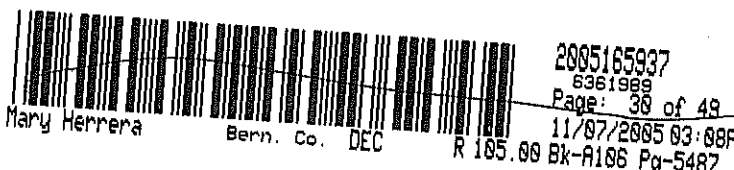
10.3.3. the business does not result in an undue volume of traffic or parking within the Community, which determination shall be made by the Board of Directors in its sole discretion from time to time;

10.3.4. the business conforms to all zoning requirements and is lawful in nature; and

10.3.5. the business conforms to any rules and regulations that may be imposed by the Board of Directors from time to time.

Section 10.4. *Household Pets.*

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot or their tenants may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of a Lot. The Association shall have, and is hereby given, the right and authority to: set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation



of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions; or determine that an Owner is otherwise in violation of any provision of this Section. If the Association determines that any of the foregoing have been or are being violated, the Association may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article 4 of this Declaration (Assessments).

Section 10.5. *Temporary Structures; Unsightly Conditions.*

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage structure (except as otherwise provided in subsection 10.7.8 hereof) or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

Section 10.6. *Exterior Holiday Decorations.*

Lights or decorations may be erected Lots in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations must be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. For other holidays, decorations or lights may not be displayed more than thirty (30) days in advance of the holiday.

Section 10.7. *Miscellaneous Improvements.*

10.7.1. Except as provided in Section 10.6 of this Declaration, no advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) of not more than a total of five (5) square feet in the aggregate. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant (with the written consent of the Declarant) in connection with the sale or rental of the Lots, or otherwise in connection with development of or construction on the Lots, shall be permissible.

10.7.2. No clotheslines, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street, from the ground level of any other Lot or from the Common Elements.

2005007387
6361989
Page: 31 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 31 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

10.7.3. No type of refrigerating, cooling or heating apparatus shall be permitted on a roof or to protrude from a window; and no such apparatus shall be permitted elsewhere on a Lot except when appropriately screened and approved by the Architectural Review Committee, subject to any provisions of any guidelines or standards adopted by the Architectural Review Committee. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved in accordance with the preceding sentence.

10.7.4. Except as may otherwise be permitted by the Architectural Review Committee, subject to any provisions of any guidelines or standards adopted by the Architectural Review Committee, no exterior radio antenna, television antennae, or other antenna, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a dwelling unit or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antennas" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antennas" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antennas" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

10.7.5. No fences shall be permitted, except those fences approved in writing by the Architectural Review Committee (which shall include any fences deemed to be approved when constructed, erected, placed, located or installed in complete conformity with the provisions of any guidelines or standards adopted by the Architectural Review Committee) and except such fences as may be constructed, erected, placed, located or installed by the Declarant in its development of the Community, or construction of Improvements in the Community.

10.7.6. No wind generators shall be constructed, installed, erected or maintained on any Lot.

No dog runs shall be permitted on Lots, except those dog runs approved in writing by the Architectural Review Committee (which shall include any dog runs deemed to be approved when constructed, erected, placed, located or installed in complete conformity with the provisions of any guidelines or standards adopted by the Architectural Review Committee).

10.7.7. Notwithstanding Section 10.5 (Temporary Structures; Unsightly Conditions) hereof, permanent storage sheds shall be permitted on Lots, but only with the prior approval of the Architectural Review Committee (which shall include any storage sheds deemed to be approved when constructed, erected, placed, located or installed in

2006007387
6364935
Page: 32 of 50
01/18/2006 09:27A
R 107.00 BK-R110 Pg-7343
Bern. Co. DEC
Mary Herrera

Mary Herrera
Bern. Co. DEC
R 105.00 BK-R110 Pg-7343
2005165937
6361989
Page: 32 of 49
11/07/2005 03:08P

complete conformity with the provisions of any guidelines or standards adopted by the Architectural Review Committee).

Section 10.8. *Traffic and Parking; Vehicular Storage and Repairs.*

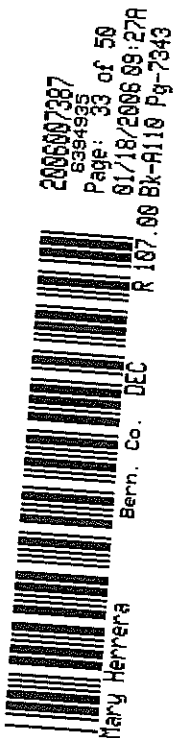
10.8.1. Owners shall observe and abide by any and all traffic and parking rules and regulations promulgated by the Association and any municipality having jurisdiction over such activity within the Community.

10.8.2. Vehicles shall be parked only in garages, driveways, areas specially designated for parking, or on a street. Parking on landscaped areas or front, side or rear yards (whether such yard is planted with grass, landscaped, xeriscaped or paved) is prohibited. Parking vehicles so as to block sidewalks and driveways, or on Common Elements (other than that designated for parking) is prohibited. At the request and direction of the Association, vehicles parked in violation of any restrictions set forth in this Declaration or otherwise promulgated by the Association may be towed or otherwise removed at the sole risk and expense of the owner of such vehicle.

10.8.3. No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding pickup trucks that are 1 ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle (including, without limitation, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes), tractor, mobile home, recreational vehicle, boats and other watercraft or equipment, may be parked or stored on a Lot unless such parking or storage is entirely within the garage area of any Lot or will be suitably screened from view in accordance with the requirements, and prior written approval of, the Architectural Review Committee (subject to subject to any provisions of any guidelines or standards adopted by the Architectural Review Committee). However, any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

10.8.4. Except as otherwise provided in this and the next sentence, no recreational vehicles, or disassembled or partially disassembled vehicles of any type, shall be parked, stored, maintained, or used on any Lot (unless such parking or storage will be within the fully enclosed garage of a Lot). However, recreational vehicles may be temporarily parked for a maximum of three (3) consecutive days in the driveway of a Lot. Recreation vehicles shall include, but not be limited to, motor homes, pick-up trucks with camper shells, trailers, motorcycles, motorbikes, snowmobiles, jet skis, all-terrain vehicles, and other apparatus intended for use on land, water, or in the air, and the trailers used for their transportation.

10.8.5. Except as provided above, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked in the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two



(72) hours or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

10.8.6. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 10.8.1, 10.8.2, 10.8.3, 10.8.4 or 10.8.5 hereof, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

10.8.7. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity, the streets and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing, on a Lot.

10.8.8. Owners shall indemnify and hold the Association harmless with respect to any claim(s) for damage or loss resulting from any vehicle parked in violation of any traffic and parking rules and regulations, or abandoned within the Community; further, Owners waive any rights that they may have under any state or local laws and ordinances in such circumstances as against the Association.

Section 10.9. Nuisances.

No nuisance shall be permitted which is visible within or otherwise affects the Community or any portion thereof, nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of the Community or any portion thereof. As used herein, the term "nuisance" shall include each violation of this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association or the Architectural Review Committee, but shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community; provided, however, that such activities of the Declarant shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or with any Owner's ingress and egress to or from his Lot and a public way. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no unlawful use shall be permitted or made of the Community or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or any portion thereof, shall be observed.

2006007387
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Page: 34 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Mary Herrera
Bern. Co. DEC

2005165937
6361989
Page: 34 of 49
11/07/2005 03:06P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

Section 10.10. *No Hazardous Activities; No Hazardous Materials or Chemicals.*

No activities shall be conducted on any Lot, or within Improvements constructed on any Lot, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 10.11. *No Annoying Lights, Sounds or Odors.*

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted in any portion of the Community that may be seen, heard or smelled from any adjoining portion of the Community.

Section 10.12. *Restrictions on Trash and Materials.*

10.12.1. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind (hereinafter, generally referred to as "refuse") shall be kept stored, or allowed to accumulate on any Lot, nor shall deposit on, or accumulation of such items by deposit on, a street or driveway be permitted except as otherwise provided in this Declaration.

10.12.2. All refuse must be placed in a receptacle designated for refuse and recycling collection and (except on collection day(s)) must be stored in a garage or alternately, at the side or rear of any home constructed on a Lot. All equipment or receptacles for the storage or disposal of refuse shall be kept and maintained in a clean and sanitary condition, and shall not be unsightly.

10.12.3. Accumulation of refuse in a manner that is visible from any other portion of the Community is prohibited.

Section 10.13. *Lots to be Maintained.*

Subject to Section 10.5 (Temporary Structures; Unsightly Conditions) hereof, each Lot shall at all times be kept in a clean and sightly condition by the Owner(s) or tenants thereof.

Section 10.14. *Leases.*

The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases are in writing and provide that the terms of the lease and lessee's occupancy of the

2005007387
Page: 35 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
Page: 35 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

leased premises shall be subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association; and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. The Association has authority to charge fines and additional fees, and to receive reimbursement costs from the Owner of a Lot for failure of a tenant or lessee of the Lot to comply with this Declaration. Such fines, additional fees and reimbursements shall be the personal obligation of the Owner, in the same manner as assessments under Section 4.1 of this Declaration (Personal Obligation for Assessments), shall be the basis for a lien of for enforcement action, and, if unpaid and delinquent, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 of this Declaration (Assessments), including without limitation, interest, late charges, attorney's fees and lien rights.

Section 10.15. *Landscaping of Lots.*

Within one (1) year after initial conveyance of each Lot (on which a single-family detached home is located) by the Declarant to an Owner other than the Declarant, the Owner of each such Lot shall install landscaping (which shall include any landscaping deemed to be approved when constructed, erected, placed, located or installed in complete conformity with the provisions of any guidelines or standards adopted by the Architectural Review Committee) on all unlandscaped portions of such Lot which are not covered by a dwelling unit, and such Owner shall be responsible for maintaining such landscaping in a neat and attractive condition, including periodic and horticulturally correct pruning, removal of weeds, and replacement of landscaping. If any Owner of a Lot fails or refuses to install landscaping, as provided above, then the Association may, at the direction of the Board of Directors and after giving the notice provided for in Section 8.2 of this Declaration (Association's Right to Repair, Maintain and Replace), enter upon such Owner's Lot and install the landscaping required by any guidelines or standards adopted by the Architectural Review Committee. The costs and expenses incurred by the Association as a result the Association installing such landscaping shall be the personal obligation of the Owner(s) of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 of this Declaration, including without limitation, interest, late charges, attorney's fees and lien rights. Additionally, in the event any Owner fails or refuses to maintain the landscaping on such Owner's Lot, as provided above, then the Association may, at the direction of the Board of Directors and after giving the notice provided for in Section 8.2 of this Declaration (Association's Right to Repair, Maintain and Replace), enter upon such Owner's Lot in order to perform such maintenance activities. The costs and expenses incurred by the Association as a result of the Association maintaining such landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article 4 of this Declaration (Assessments), including without limitation, interest, late charges, attorney's fees and lien rights.

ARTICLE 11. PROPERTY RIGHTS IN THE COMMON ELEMENTS

Section 11.1. *Owners' Easements of Enjoyment.*

Subject to this Article, every Owner shall have a non-exclusive right and easement for the purpose of access to such Owner's Lot and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

2006007387
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Page: 36 of 58
01/18/2006 09:27A
R 107.00 BK-R110 Pg-7343
Bern. Co. DEC
Mary Herrera

Mary Herrera
Bern. Co. DEC
R 105 00 BK-R110 Pg-7343
2005165937
6361989
Page: 36 of 49
11/07/2005 03:08P

Section 11.2. *Extent of Owners' Easements.*

Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner which violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the Common Elements. In addition, such rights and easements are subject to the following rights of the Association:

11.2.1. the right of the Association to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; and

11.2.2. the right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

11.2.3. the right of the Association to promulgate and publish rules and regulations, and of the Architectural Review Committee to promulgate standards, guidelines, rules and regulations, with which each Member shall strictly comply, including, but not limited to, the right to regulate and/or restrict vehicular parking and Improvements; and

11.2.4. the right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Declaration or the Association's Bylaws or rules and regulations; and

11.2.5. the right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful for the proper maintenance or operation of the Community shall not be deemed a transfer within the meaning of this subsection; and

11.2.6. the right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, their family members, guests and invitees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

11.2.7. the right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

Section 11.3. *Use of Common Elements by Declarant.*

An easement is hereby granted to the Declarant on, over and through the Common Elements as may be reasonably necessary for the purpose of exercising or discharging any of Declarant's

2006007387
6394935
Page: 37 of 58
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 37 of 49
11/07/2005 03:08P
Mary Herrera
Bern. Co. DEC
R 105.00 Bk-A106 Pg-5487

rights or obligations or exercising any Special Declarant Rights, and no Owner shall engage in any activity which will temporarily or permanently interfere with the Declarant's easements on, over and through the Common Elements.

Section 11.4. *Delegation of Use.*

Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 11.5. *Payment of Taxes or Insurance by Security Interest Holders.*

Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may be or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

Section 11.6. *Conveyance or Encumbrance of Common Elements.*

Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with the provisions of this Declaration.

Section 11.7. *Designation of Common Elements.*

Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements now or hereafter owned by the Association are not dedicated hereby for use by the general public.

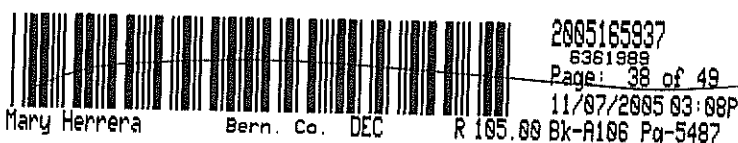
Section 11.8. *Duty to Accept Property and Facilities Transferred by Declarant.*

The Association shall accept title to any property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Common Elements to be located in the property described on the attached Exhibit A and/or the Annexable Area, and/or easements.

ARTICLE 12. ANNEXATION; WITHDRAWAL; REPLATTING

Section 12.1. *Annexation; Withdrawal.*

Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.



2006007387
6394935
Page: 39 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

12.1.1. Notwithstanding the foregoing, the Declarant may annex to this Declaration the Annexable Area or any portion(s) thereof, until seven (7) years after recording of this Declaration, without consent of any other Owners, Security Interest Holders, or any other Person; however, each such annexation is subject to a determination by HUD or VA (if the Declarant desires to attempt to obtain HUD or VA approval of the property being annexed and if HUD or VA require such approval) that the annexation is in accord with the general plan approved by them and that the structures to be located thereon will be of comparable style, quality, size and cost to the existing Improvements. Each annexation shall be effected, if at all, by recording an Annexation of Additional Land in the Office of the County Clerk of the County in which the annexed property is located, which document:

12.1.1.1. shall provide for annexation to this Declaration of the property described in such Annexation of Additional Land;

12.1.1.2. shall reallocate the Allocated Interests; and

12.1.1.3. may include such other provisions as the Declarant deems appropriate. Other provisions that may be included in an Annexation of Additional Land or Supplemental Declaration include, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration. Any of such other provisions referenced in this subsection may be amended with the consent of the Owners of sixty-seven percent (67%) of the Lots to which such other provisions apply.

12.1.2. In addition to the rights contained above, and notwithstanding anything to the contrary contained in this Declaration, the Declarant may annex to this Declaration the Annexable Area or a portion(s) thereof until that date which is seven (7) years after recording of this Declaration, by recording a deed by which property is conveyed by the Declarant. Each of such deeds shall be deemed to include the following provisions whether or not such provisions are expressly contained in such deed: the property described in such deed shall be annexed to this Declaration; and the Allocated Interest appurtenant to each Lot that is contained in the annexed property shall be that fraction determined in accordance with Section 1.2 of this Declaration. Notwithstanding the foregoing, a deed which does not convey property from the Declarant shall not be an annexing deed as provided in this subsection, nor shall a deed which otherwise complies with this subsection if the same states on its face that it is not an "annexing deed" and the same is initialed by the grantor of such deed.

12.1.3. The Declarant hereby reserves the right, from time to time, to record one or more documents in order to clarify the effect of any annexation(s), including without limitation any matters contained in Article 12 of this Declaration. Each such document(s), if any such document(s) are recorded by the Declarant in its discretion, may state the legal description(s) of any property which has been annexed, and may include such other

2005165937
6361969
Page: 39 of 49
11/07/2005 03:08P
Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

provisions which the Declarant, in its discretion, may determined in order to clarify any matter having to do with annexation of such property to this Declaration.

12.1.4. Except as otherwise specifically stated by the Declarant in a recorded document, all provisions of this Declaration, including (as to Lots), but not limited to, those provisions regarding obligations to pay assessments to the Association and any right to cast votes as Members, shall apply to the annexed property immediately upon the effective date of the Annexation of Additional Land or other document of annexation (which shall constitute the date of recording of the Annexation of Additional Land or other annexation document, unless otherwise stated therein), unless and to the extent any provisions of this Declaration are, as to the annexed property or any portion thereof, changed or deleted by such Annexation of Additional Land.

12.1.5. All property which has been subjected to this Declaration may be withdrawn from this Declaration by Declarant as long as such property is owned by the Declarant. Each such withdrawal may be accomplished, if at all, by the execution and recordation of a Notice of Withdrawal which describes the property that is being withdrawn from this Declaration. Each such withdrawal shall be effective upon recording of the Notice of Withdrawal and, upon such recording, the property described therein shall no longer be subject to this Declaration. The Declarant's right to withdraw any property shall expire and terminate upon automatic termination of the Special Declarant Rights as provided in Section 1.24 of this Declaration.

Section 12.2. *Subdivision or Replatting of Lots.*

The Declarant hereby reserves the right to subdivide or replat any Lot(s) owned by the Declarant and each such subdivision or replatting may change the number of Lots in the Community. Without limiting the generality of the foregoing, the Declarant reserves the right to move any Lot line(s) on Lot(s) owned by the Declarant, for the purpose of accommodating Improvements which are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.24 of this Declaration.

Section 12.3. *Declarant's Use.*

Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for the Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots and the Common Elements such facilities as the Declarant deems appropriate, specifically including, without limiting the generality of the foregoing, maintaining signs, sales offices, management offices, model units and construction offices, in such numbers, of such sizes, and at such locations as the Declarant determines in its sole discretion from time to time. Nothing contained in this Declaration shall limit the rights of the Declarant to conduct all construction, sales, and marketing activities as the Declarant deems necessary or desirable and to use the easements provided in this Declaration for those and other purposes. Further, nothing contained in this Declaration shall limit the rights of the Declarant or require the Declarant to obtain approvals: (a) to excavate, cut, fill or grade any property or to construct, alter, demolish or replace any Improvements; (b) to use any Improvements

2006007387
6354935
Page: 48 of 50
01/18/2006 09:27A
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Bern. Co. DEC
Mary Herrera

2005165937
6361985
Page: 48 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Mary Herrera Bern. Co. DEC

on any property as sales offices, management offices, model units and/or construction offices in connection with the development, construction or sale of any property; and/or (c) to require the Declarant to seek or obtain the approval of the Architectural Review Committee, the Board of Directors, or the Association for any activity.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1. *Duration, Revocation, Amendment and Termination of Declaration.*

13.1.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration, this Declaration may be amended or terminated by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests; provided, however, while Declarant owns any portion of the property described on the attached Exhibits A and C, no amendment or termination may be made except with the affirmative vote or agreement of Members holding ninety percent (90%) of the Association votes.

13.1.2. Notwithstanding anything to the contrary contained in this Declaration, this Declaration, the Articles of Incorporation and Bylaws of the Association, may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.24 of this Declaration (Special Declarant Rights).

13.1.3. Notwithstanding anything to the contrary contained in this Declaration, this Declaration, the Articles of Incorporation and Bylaws of the Association, may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors, or to clarify any of the provision(s) of any such documents. Such right of amendment shall terminate automatically as provided in Section 1.24 of this Declaration (Special Declarant Rights).

13.1.4. Except as to amendments which may be made by the Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration which may be made by the Declarant pursuant to this Declaration, may be signed by the Declarant and shall require no other signatory.

Section 13.2. *HUD or VA Approval.*

During the 75% Control Period, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests and HUD or VA require such approval: annexation of

2006007387
6394935
Page: 41 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 41 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

additional real property (if the Declarant desires to obtain HUD or VA approval of the property that is being annexed and HUD or VA require such approval); amendment of this Declaration, except as provided in Article 12 of this Declaration (Annexation; Withdrawal; Replatting); termination of this Community; or merger or consolidation of the Association, except as provided in Section 3.14 of this Declaration (Merger).

Section 13.3. *Enforcement.*

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, may be by any proceeding at law or in equity against any Person(s) violating or attempting to violate any such provision. Except as otherwise provided in this Declaration, the Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings. For each claim, including, but not limited to, counterclaims, cross claims and third-party claims, in any proceeding to enforce the provisions of the Declaration, Articles of Incorporation, Bylaws or rules and regulations of the Association, the party prevailing on such claim shall be entitled to or awarded its reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.4. *Minor Violations of Setback Restrictions.*

If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

Section 13.5. *Liability for Failure of Association to Maintain an Action.*

No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of such director or officer's duties; (b) the director or officer was not acting in bad faith; and (c) the act or omission was not willful, wanton or grossly negligent.

Section 13.6. *Limitation on Liability.*

The Association, the Board of Directors, the Architectural Review Committee, the Declarant, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act

2005007387
6354935
Page: 42 of 50
01/18/2006 09:27A
R 107.00 Bk-A110 Pg-7343
Bern. Co. DEC
Mary Herrera

2005165937
6361989
Page: 42 of 49
11/07/2005 03:08P
R 105.00 Bk-A106 Pg-5487
Bern. Co. DEC
Mary Herrera

was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 13.14 of this Declaration (Waiver), below, shall apply to this Section.

Section 13.7. *No Representations, Guaranties or Warranties.*

No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Architectural Review Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 13.14 of this Declaration (Waiver) below, shall apply to this Section.

Section 13.8. *Disclaimer Regarding Safety.*

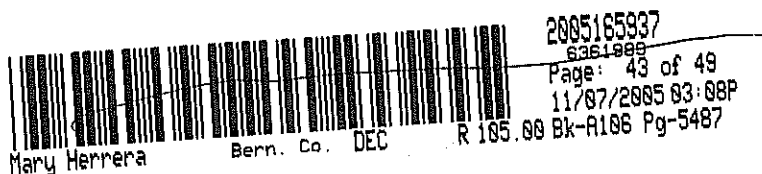
DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 13.14, BELOW, SHALL APPLY TO THIS SECTION.

Section 13.9. *Notice of Sale or Transfer of Title.*

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other non-proprietary information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, accruing until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Section 13.10. *Registration of Mailing Address.*

Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered



or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the 75% Control Period shall be sent by registered or certified mail, postage prepaid, to KB Home New Mexico Inc., 6330 Riverside Plaza Drive NW, Suite 200, Albuquerque, NM 87120, unless such address is changed by the Association during the 75% Control Period; subsequent to expiration of the 75% Control Period, the Association shall notify the Owners of a different address for notices.

Section 13.11. *Transfer of Special Declarant Rights.*

A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located.

Section 13.12. *Eminent Domain.*

The taking by eminent domain of a Lot(s) or Common Elements(s), or any portion thereof, shall be done in accordance with applicable law.

Section 13.13. *No Partition.*

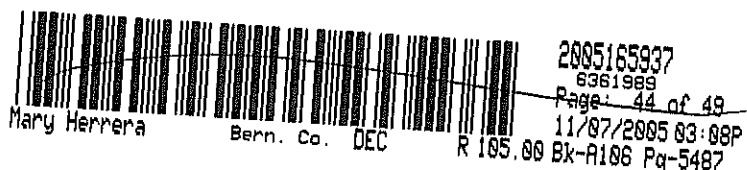
Except as permitted in this Declaration, there shall be no judicial partition of the Common Elements. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration.

Section 13.14. *Waiver.*

By acceptance of a deed to a Lot, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, the Architectural Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 13.5 (Liability for Failure of Association to Maintain an Action), 13.6 (Limitation on Liability), 13.7 (No Representations, Guaranties or Warranties) and 13.8 (Disclaimer Regarding Safety), above.

Section 13.15. *Headings.*

The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.



Section 13.16. *Gender.*

Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

Section 13.17. *Run with Land; Binding Upon Successors.*

The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements which are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of the Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.

Section 13.18. *Severability.*

All provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 13.19. *Conflict of Provisions.*

In case of any conflict between the Master Declaration and this Declaration, the Articles of Incorporation or Bylaws of the Association shall control. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this 1 day of NOVEMBER, 2005.

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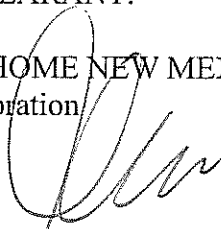
Mary Herrera
Bern. Co. DEC
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Page: 45 of 49
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DECLARANT:

KB HOME NEW MEXICO INC., a New Mexico corporation

By:

Title:



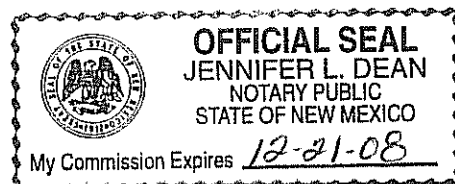
ROBERT H. COLEMAN

DIRECTOR - LAND

STATE OF New Mexico

COUNTY OF Bernalillo

SS.

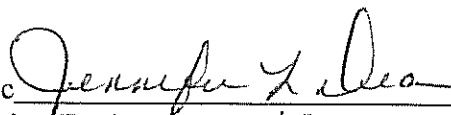


The foregoing instrument was acknowledged before me this 1 day of November, 2005, by Robert H. Coleman as Director of Land of KB HOME NEW MEXICO INC., a New Mexico corporation.

Witness my hand and official seal.

{SEAL}

Notary Public



My Commission Expires:

12-21-05

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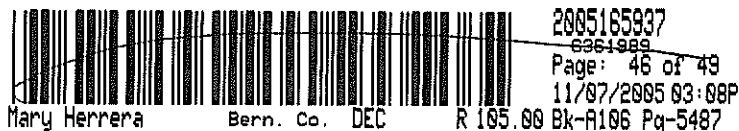


EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR THE ORCHARDS AT ANDERSON HEIGHTS

(Community)

Parcels 2-A, 2-B, 2-C, & 2-D of the plat of LANDS OF RIO BRAVO PARTNERS, Albuquerque, Bernalillo County, New Mexico, within Section 5, Township 9 North, Range 2 East N.M.P.M., Bernalillo County, New Mexico as the same is shown and designated on the plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on April 17, 1996 in Plat Book 96C, folio 160. Units 1, 1A, 2 and 3.

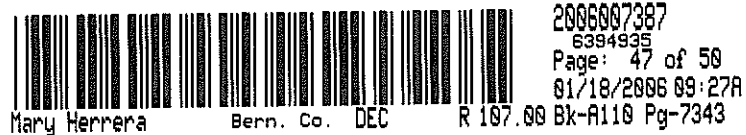


EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS


(Common Elements)



Mary Herrera Bern. Co. DEC R 107.00 Bk-A110 Pg-7343
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Page: 48 of 50
01/18/2006 09:27A


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2005165937
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Page: 48 of 49
11/07/2005 03:08P

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS

(Part of Annexable Area)

 2006007387
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Page: 49 of 50
01/18/2006 09:27A
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Page: 49 of 49
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Mary Herrera Bern. Co. DEC R 105.00 Bk-A106 Pg-5487

WHEN RECORDED RETURN TO:

KB Home New Mexico Inc.
432 North 44th Street
Suite 400
Phoenix, Arizona 85008
Attention: Regional Counsel

**FIRST AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF ORCHARDS AT ANDERSON HEIGHTS**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ORCHARDS AT ANDERSON HEIGHTS (the "First Amendment") is made and entered into by KB HOME NEW MEXICO INC., a New Mexico corporation, its parent, affiliates and subsidiaries (the "Declarant").

RECITALS

WHEREAS, the Declarant provided for the recordation of the Declaration of Covenants, Conditions, and Restrictions of Orchards at Anderson Heights on November 7, 2005 in the Office of the County Clerk of Bernalillo County at Book A106 commencing at Page 5487 as Document No. 2005165937 (the "Declaration"); and

WHEREAS, the Declaration provides at Article 4, "Assessments" for the payment of reduced assessments to the Association by the Declarant; and

WHEREAS, the Declarant is desirous of providing additional assistance in the promotion of the health, safety, and welfare of the residents of Orchards at Anderson Heights; and

WHEREAS, the Declarant is willing to waive its right to pay reduced assessments and is willing, instead, to contribute to and subsidize the funding of the Association during the 75% Control Period in order to provide additional assistance to promote the health, safety, and welfare of the residents of Orchards at Anderson Heights; and

WHEREAS, the Declarant desires to correct various errors contained within the Exhibits to the Declaration.

AMENDMENT



THEREFORE, Declarant is willing to and hereby does amend the Declaration, as follows:

1. The foregoing recitals are incorporated herein by reference.

2. Terms defined in the Declaration and delineated herein by initial capital letters shall have the same meaning ascribed thereto in the Declaration, except to the extent the meaning of such term is specifically modified by the provisions hereof. In addition, other terms not defined in the Declaration but defined herein, will, when delineated with initial capital letters, have the meanings ascribed thereto in this First Amendment. Terms and phrases which are not delineated by initial capital letters shall have meanings commonly ascribed thereto.

3. Subsection 4.4.3 shall be deleted in its entirety.

4. The following Section 4.15 shall be added to the Declaration:

Section 4.15. Declarant Contribution

4.15.1 Notwithstanding anything to the contrary contained herein, during the 75% Control Period, Declarant shall elect to either (i) pay the applicable reduced annual and special assessments in connection with the Initially Unoccupied Lots, as provided under Section 4.4.1 of this Declaration, or (ii) contribute an amount to the Association for each fiscal year (the "Contribution"), in connection with the Initially Unoccupied Lots. If Declarant elects (ii) above, then Declarant shall have no obligation, in connection with the Initially Unoccupied Lots, to pay any annual or special assessments under this Declaration. The Contribution shall be calculated as follows:

4.15.1.1 The estimated total of all income and revenue of any kind received by the Association for the fiscal year including, but not limited to, assessments, use fees, advances made by Declarant, and income from all other sources (the "Gross Income") shall be calculated.

4.15.1.2 The estimated expenses and expenditures for the Association (including reserve contributions) for the fiscal year shall be determined, excluding non-cash items such as depreciation and amortization (the "Gross Expenses").

4.15.1.3 Gross Expenses shall be deducted from Gross Income and the shortfall (if any) shall constitute the amount of the Contribution due from Declarant.

4.15.1.4 Upon the expiration of the 75% Control Period, the Declarant shall no longer be obligated to pay the Contribution.

4.15.2 The Board may (but is not obligated to) enter into contracts or agreements with the Declarant for "in kind" contributions of services, materials or a combination of services and materials in lieu of the Contribution or any portion thereof.

4.15.3 The Declarant will pay the Contribution on a quarterly basis, except that the Master Declarant may, at the Declarant's sole option, pay the Contribution on a more frequent basis as determined by the Declarant.

5. Exhibit A to the Declaration contained errors in the description of the Community and is hereby deleted in its entirety and the attached Exhibit A hereby inserted in its place.

6. Exhibits B and C attached hereto are hereby incorporated into the Declaration as Exhibit B (Common Elements) and Exhibit C (Part of Annexable Area) to the Declaration.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal this ____ day of January, 2007.

DECLARANT:

KB HOME NEW MEXICO INC.,
a New Mexico corporation

By: [Signature]

Its: Senior V. P.

STATE OF NEW MEXICO)
COUNTY OF Bernalillo) ss.

This instrument was acknowledged before me on January 24, 2007, by Robert Young, Senior Vice President of KB Home New Mexico Inc., a New Mexico corporation, on behalf of said corporation.

[Signature]
NOTARY PUBLIC

My commission expires:

12-21-08

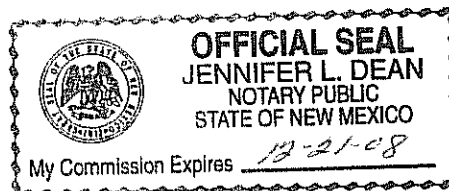


EXHIBIT A

(Community)

Lots 13 through 35, Block 13, inclusive, and Lots 19 through 35, Block 17, inclusive, of the plat for Anderson Heights Unit 1A, filed in the office of the County Clerk of Bernalillo County, New Mexico, in Plat Book 2005C, Page 272, as Document 2005-114386 and Lots 36 through 69, inclusive, Lots 126 through 170, inclusive, Block 13, Lots 1 through 44, Block 18, inclusive, Lots 1 through 18, Block 19, inclusive, Lots 1 through 18, Block 20, inclusive, and Lots 25 through 34, Block 21, inclusive, of the plat for Anderson Heights Unit 2, filed in the office of the County Clerk of Bernalillo County, New Mexico, in Plat Book 2006C, Page 87, as Document 2006-038050.

EXHIBIT B

(Common Elements)

Tracts A and B, inclusive, of the plat for Anderson Heights Unit 1A, filed in the office of the County Clerk of Bernalillo County, New Mexico, in Plat Book 2005C, Page 272, as Document 2005-114386 and Tracts A, C, D, E, F, G and H of the plat for Anderson Heights Unit 2, filed in the office of the County Clerk of Bernalillo County, New Mexico, in Plat Book 2006C, Page 87, as Document 2006-038050.

EXHIBIT C

(Part of Annexable Area)

A part of land situate within the Town of Atrisco Grant, projected Sections 5 and 8, Township 9 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico, being all of Parcel 3, Anderson Heights Unit 1 as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico on May 4, 2005 in Book 2005C, Page 138 and containing 17.7805 acres more or less.



ARTICLE 12. AMENDMENTS

Section 12.1. Prior to termination of the 75% Control Period, these Bylaws may be amended by the Board of Directors. After termination of the 75% Control Period, these Bylaws may be amended by the Members as long as, prior to any meeting of Members at which an amendment will be voted on: the Association gives notice to each Member entitled to vote on the amendment; such notice states that one of the purposes of the meeting is to consider the amendment; such notice is accompanied by a copy or summary of the amendment; and, at such regular or special meeting of the Members at which a quorum is present in person or by proxy, the votes that are cast in favor of said amendment exceed the votes that are cast against such amendment. In addition, these Bylaws may be amended by a vote of Members by written ballot as provided in these Bylaws.

Section 12.2. Notwithstanding anything to the contrary contained in this Article, the written approval of HUD or VA shall be required for any amendments enacted during the 75% Control Period if, at the time such amendment is enacted, HUD has insurance or VA has a guarantee(s) on one or more Security Interests and HUD or VA requires such approval.

ARTICLE 13. CONFLICTS OF PROVISIONS

In case of any conflict between the Master Declaration and the Declaration, the Master Declaration shall control. In case of any conflict between the Declaration and the Articles of Incorporation or these Bylaws, the Declaration shall control. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control.

ARTICLE 14. FISCAL YEAR

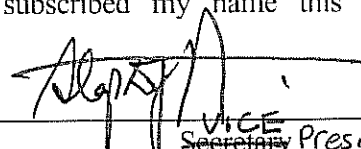
The fiscal year of the Association shall begin on the first day of January and end on the last day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of the Orchards at Anderson Heights Subassociation, Inc. a New Mexico nonprofit corporation, and

That the foregoing Bylaws constitute the Bylaws of said Association as duly adopted at a meeting of the Board of Directors thereof, held on the 12th day of January, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of January, 2006.



VICE
Secretary President

Forms

Orchards At Anderson Heights
Homeowners Association, Inc.