



# **Signal Hill**

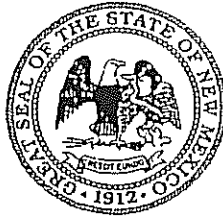
Homeowners Association, Inc.

- Articles of Incorporation
- Bylaws
- Declaration of Covenants,  
Conditions and Restrictions
- Forms

# Articles of Incorporation

Signal Hill  
Homeowners' Association, Inc.





OFFICE OF THE  
PUBLIC REGULATION COMMISSION

CERTIFICATE OF COMPARISON

OF

SIGNAL HILL HOMEOWNERS' ASSOCIATION, INC.


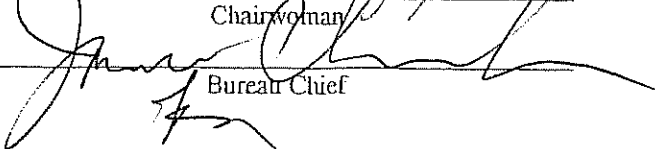
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The Public Regulation Commission certifies that the attached is a true and complete copy of the \*\*\*28\*\*\* page document(s) on file in this office.

This Certification is in accordance with Section 53-8-93 NMSA 1978.

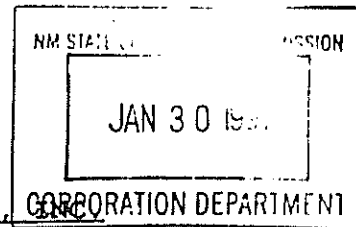
DATED: JULY 26, 2002

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.

  
Chairwoman  
  
Bureau Chief

1844919

ARTICLES OF INCORPORATION  
OF  
SIGNAL HILL HOMEOWNERS' ASSOCIATION, INC.



THE UNDERSIGNED, being an unincorporated homeowners' association and being desirous of forming a non-profit corporation under the laws of the State of New Mexico, has prepared and hereby adopts the following Articles of Incorporation:

ARTICLE I  
Name

The name of the Corporation shall be SIGNAL HILL HOMEOWNERS' ASSOCIATION, INC. (the "Corporation").

The Corporation shall not afford, directly or indirectly, pecuniary gain or profit to its members. The purposes of the Corporation are:

A. To operate exclusively for the benefit of the owners and residents of houses situate within the property situate in Bernalillo County, New Mexico, and more further described as follows:

B. To own, hold and/or manage certain common areas and/or easement areas (hereinafter called "the Common Areas") for the benefit of the owners and residents of the homes situate within the Properties; and

C. To enforce the provisions of and perform the duties set forth in the Signal Hill Subdivision Restrictions, A Declaration of Restrictions, Covenants and Conditions for the Creation and Maintenance of a Planned Residential Development (hereinafter "the Restrictions") filed for record with respect to the Properties on January 16, 1997, in Book Misc. 97-2, Pages 1629-1645, Document No. 97005011 of the Real Estate Records of Bernalillo County, New Mexico.

757 2248 ARTICLE II  
Powers

The Corporation shall have the following powers:

A. To perform any and all acts necessary and proper to promote the health, safety and welfare of the owners and residents of houses situate within the Properties, including without

limitation, any of the following acts:

(1) To establish and collect annual and special assessments or charges to be levied against the members of the Corporation and their houses located within the Properties as provided in the Restrictions;

(2) To enforce any and all covenants, conditions and restrictions as set forth in the Restrictions, including any amendments thereto;

(3) To own, acquire, build, operate and maintain landscaping and utilities located within the Common Areas;

(4) To pay taxes, if any, assessed against the Common Areas and to discharge any liens or claims of lien against the Common Areas;

(5) To receive, administer and apply funds generated by annual and special assessments for the common benefit of the owners and residents of Houses located within the Properties.

B. To perform all acts and exercise all powers authorized by the Non-Profit Corporation Act, Sections 53-8-1 through 53-8-99, N.M.S.A. 1978 Comp., as now or hereafter amended, and to perform all acts and exercise all powers which a nonprofit corporation is authorized to do under all applicable statutes of New Mexico, as now or hereafter amended, including without limitation, the following:

(1) To receive and administer funds and contributions received by gift, deed, bequest or devise and to hold, invest, expend, contribute or otherwise dispose of such funds and contributions for the purposes for which this Corporation is organized;

(2) To borrow money and make, execute or issue bonds, debentures, promissory notes or other corporate obligations for money borrowed, or in payment for property acquired, and to secure the payment of any such corporate obligations by pledge, mortgage, indenture, agreement or otherwise;

(3) To lend money, make loans and engage in financing arrangements of all types for the purposes for which this Corporation is organized;

(4) To acquire by purchase or otherwise personal property of every kind whatsoever and to hold, invest and reinvest same

for the purposes for which the Corporation is organized;

(5) To acquire by purchase or otherwise real property and to hold, use, improve, lease, rent, sell, convey or encumber same for the purposes for which this Corporation is organized;

(6) To enter into, make, perform and carry out contracts, agreements, commitments and assurances of every kind for the purposes for which this Corporation is organized; and

(7) In doing, exercising or performing any of the foregoing, to do the same as a contractor, subcontractor, principal, agent, employee or on its own behalf, or in association, partnership, corporation or joint venture with any person, partnership, corporation, joint venture or other business entity.

C. To exercise all powers which the Corporation is authorized to exercise pursuant to these Articles of Incorporation primarily for the purposes of acquisition, construction, management, maintenance and care of Common Areas consistent with the provisions of Section 528 of the Internal Revenue Code of 1954, as now or hereafter amended.

D. The Corporation shall neither have nor exercise any power, nor shall it directly or indirectly engage in any activity which would result in its net earnings inuring to the benefit of any private person.

### ARTICLE III

The period of duration of the Corporation shall be perpetual.

### ARTICLE IV

#### Registered Agent and Office

The registered agent of the Corporation is John A. Myers and the address of the registered office of the Corporation is 6400 Uptown Boulevard, N.E., Suite 100 West, Albuquerque, New Mexico 87110.

757 2249

### ARTICLE V

#### Board of Directors

The management of the affairs of the Corporation shall be vested in a Board of Directors consisting of not more than five (5) persons and shall initially be three (3) persons. The Board shall be appointed by and serve at the pleasure of the Grators until

December 31, 1997. At the 1997 Annual Meeting of Members, one (1) member of the Board of Directors shall be elected to serve one (1) year terms. The remaining two (2) members of the Board of Directors shall be elected for two (2) year terms and all subsequent elections for membership to the Board of Directors shall be for two (2) year terms. Directors may be non-members of the Association. The number of Board members may be changed by an amendment to the By-Laws. Until the First Annual Meeting of Members, the initial Board of Directors shall consist of the three (3) persons whose names and addresses appear below:

Charles A. Haegelin  
6301 Indian School Road, NE  
Suite 680  
Albuquerque, New Mexico 87110

Lou Moya  
6301 Indian School Road, NE  
Suite 680  
Albuquerque, New Mexico 87110

Bo Johnson  
6301 Indian School Road, NE  
Suite 680  
Albuquerque, New Mexico 87110

The Association shall indemnify its directors and officers against expenses, costs and attorney's fees actually and reasonably incurred by them in connection with the defense of any action, suit, or proceeding, civil or criminal in which they are made a party by reason of being or having been a director or officer of the Association unless they are guilty of negligence or misconduct in their performance of their duties as directors or officers.

#### ARTICLE VI

##### Name and Address of Incorporator

~~757 2250~~  
The name and address of the Incorporator is as follows:

John A. Myers, Esq.  
Myers, Oliver & Price, P.C.  
6400 Uptown Blvd., NE  
Suite 100-W  
Albuquerque, New Mexico 87107



## ARTICLE VII

### Membership and Voting Rights

A. Membership. Every person or entity who is the beneficial owner of a fee simple interest, including the Purchaser under a contract of sale, in any Lot subject to the Restrictions shall be a member of the Association; provided that any person or entity holding such interest as security for the payment of a debt or performance of any obligation shall not be a member; provided, however, that any person or entity who acquires such interest at a judicial sale or by conveyance in lieu of foreclosure shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Restrictions.

B. Voting Rights. The Association shall have one (1) class of voting membership. Each member shall be entitled to one vote for each Lot in which they hold the interest required for membership as provided in Section A of this Article VIII. When more than one person or entity holds such interest, all such persons or entities shall be members, but only one vote shall be cast with respect to any Lot.

C. Suspension of Membership and Voting Rights. The rights of membership, including the right to vote and the right to participate in Association affairs, are subject to suspension by the Board for: (1) failure or refusal to pay any assessment levied by the Association for a period of thirty (30) days after the due date of such assessment; or (2) an infraction of, default in or breach of any provision of the Restrictions, the Articles, the By-Laws or the Rules and Regulations of the Association.


## ARTICLE VIII

### Amendment

757 2251

These Articles of Incorporation may be amended, changed, modified or repealed in the manner now or hereafter provided by law upon the affirmative vote of two-thirds (2/3) of the members entitled to vote in person or by proxy at a meeting duly called for that purpose, written notice of which shall have been sent to all members not less than thirty (30) nor more than fifty (50) days prior to such meeting. So long as the Grantor owns any Lots, any amendment to these Articles shall require the written consent of VA or FHA. Such written notice of meeting must set forth the purpose of the meeting.

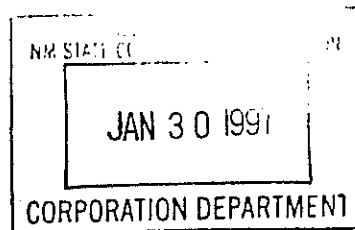
IN WITNESS WHEREOF, the undersigned Incorporator of this Corporation has made and signed these Articles of Incorporation this 23<sup>rd</sup> day of January, 1997.

  
\_\_\_\_\_  
JOHN A. MYERS  
Incorporator

757 2252

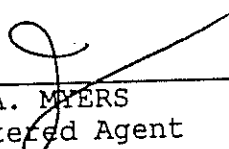
AFFIDAVIT OF ACCEPTANCE OF APPOINTMENT  
BY DESIGNATED INITIAL REGISTERED AGENT

To: The State Corporation Commission  
State of New Mexico



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

On this 23rd day of January, 1997, before me, a Notary Public in and for the State and County aforesaid, personally appeared JOHN A. MYERS, who is to me known to be the person and who, being by me duly sworn, acknowledged to me that he does hereby accept his appointment as the initial Registered Agent of SIGNAL HILL HOMEOWNERS' ASSOCIATION, INC., the Corporation which is named in the annexed Articles of Incorporation, and which is applying for a Certificate of Incorporation pursuant to the provisions of the Nonprofit Corporation Act of the State of New Mexico.

  
\_\_\_\_\_  
JOHN A. MYERS  
Registered Agent

Described and sworn to before  
me on the day, month, and year  
first above set forth:

J. Celestina Blau  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
11-9-99

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# Bylaws

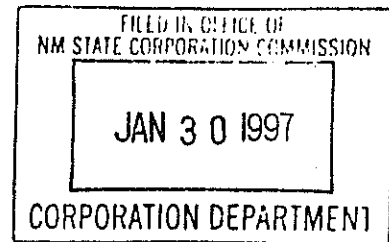
Signal Hill  
Homeowners' Association, Inc.



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BY-LAWS OF SIGNAL HILL HOMEOWNERS' ASSOCIATION, INC.

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BY-LAWS

OF

SIGNAL HILL HOMEOWNER ASSOCIATION, INC.

These By-Laws are made for the purpose of managing the affairs of the Signal Hill Homeowners' Association, Inc., a New Mexico non-profit corporation, the SIGNAL HILL SUBDIVISION RESTRICTIONS, hereinafter referred to as "Restrictions," as they may be amended from time to time and the Articles of Incorporation of this Corporation.

ARTICLE I  
OFFICES

Section 1.01: PRINCIPAL OFFICE.

The principal office for the transaction of business of the Corporation is hereby fixed and located at 6301 Indian School Road, NE, Suite 680, Albuquerque in the County of Bernalillo, New Mexico, 87110. The Board of Directors is hereby granted full power and authority to change the place of the principal office to another location within the City of Albuquerque, New Mexico.

ARTICLE II  
MEMBERS' MEETINGS

Section 2.01: PLACE OF MEETINGS.

All meetings of the members shall be held within the Signal Hill Subdivision or at such other place within the City of Albuquerque, New Mexico, as designated from time to time by resolution of the Board of Directors or written consent of all members of the Board. During any time no adequate facility is available within the subdivision, the Board may designate a meeting place outside the subdivision but as close thereto as practicable.

Section 2.02: ANNUAL MEETINGS.

The annual meeting of the members shall be held on the 1st Tuesday of December of each year if not a legal holiday, and if a legal holiday, then on the next succeeding business day at the hour of 7:00 p.m., at which time the members shall elect by plurality vote a Board of Directors, consider reports of the affairs of the Corporation, and transact such other business as may properly be brought before the meeting. The date and time of the annual meeting may be changed by Resolution of the Board.

Section 2.03: SPECIAL MEETINGS.

Special meetings of the members, for any purpose or purposes whatsoever, may be called at any time by the President, or by the Board of Directors, or by any two or more members thereof, or by one or more members holding not less than twenty-five percent (25%) of the voting power of the Corporation. During the period Grantor holds votes in the Association, such meetings may be called by one or more members holding not less than fifteen percent (15%) of the voting power of the Corporation, excluding Grantor.

Section 2.04: NOTICE OF MEETINGS.

Notice of meetings, annual or special, shall be given in writing to members entitled to vote by the Secretary or the Assistant Secretary, or if there be no such officer, or in a case of his neglect or refusal, by any director or member.

Such notices shall be sent to the members' address appearing on the books of the Corporation, or supplied by him to the Corporation for the purpose of notice, not less than ten (10) days before such meeting.

Notice of any meeting of members shall specify the place, the day and the hour of meeting, and in case of special meeting, in the manner provided by law, shall state the general nature of the business to be transacted.

Notice of the business to be transacted shall also be given for any meeting at which the following matters are to be considered:

1. Lease or transfer of all or substantially all of the Corporation's assets,
2. Merger with another corporation,
3. Amendment of the Restrictions or Articles of Incorporation,
4. Dissolution of the Corporation, or
5. Plans for distribution of assets in connection with dissolution.

When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save, as aforesaid, it shall not be necessary to give any notice of the adjournment or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which such adjournment is taken.

Section 2.05: CONSENT TO MEMBERS' MEETINGS.

The transactions of any meeting of members, however called and noticed, shall be valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, sign a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Any action which may be taken at a meeting of the members, except the approval of agreements to merge or consolidate with other corporations, may be taken without a meeting if authorized by a writing signed by all of the members who would be entitled to vote at a meeting for such purpose, and filed with the Secretary of the Corporation.

Section 2.06: QUORUM.

Members having twenty-five percent (25%) of votes either present in person, or represented by proxy, shall be a requisite to and shall constitute a quorum at all meetings of the members for the transaction of business, except as otherwise provided by law, by the Restrictions, by the Articles of Incorporation, or by these By-Laws. If, however, such majority shall not be present or represented at any meeting of the members, the members entitled to vote, present in person, or by proxy, shall have power to adjourn the meeting from time to time, to a date not less than five (5) or more than thirty (30) days from the date of the adjourned meeting, until the requisite number of votes shall be present. At such adjourned meeting at which the requisite number of votes shall be represented, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.07: VOTING RIGHTS: CUMULATIVE VOTING.

Only members whose names stand on the records of the Corporation as entitled to vote on the day of any meeting of members, unless some other day be fixed by the Board of Directors for the determination of members of record, then on such other day, shall be entitled to vote at such meeting.

Every member entitled to vote shall be entitled to the votes as set out in the restrictions, except that for the election of directors each member shall be entitled to a number of votes equal to the number of directors to be elected, multiplied by the number of votes which he is entitled to vote.

The election of Directors shall be by secret written ballot.

Section 2.08: PROXIES.

Every person entitled to vote or execute consents shall have the right to do so, either in person, or by an agent or agents authorized by written proxy, executed by such person or his duly authorized agent and filed with the Secretary of the Corporation. The manner of execution, revocation, and use of proxies shall be governed by the general provisions of law.

ARTICLE III  
DIRECTORS; MANAGEMENT

Section 3.01: POWERS.

Subject to the limitation of the Restrictions, Articles of Incorporation, of the By-Laws and of the laws of the State of New Mexico as to actions to be authorized or approved by the members, all corporate powers shall be exercised by or under authority of, and the business and affairs of this Corporation shall be controlled by, a Board of Directors.

Section 3.02: NUMBER OF DIRECTORS.

The number of Directors of the Corporation shall be three (3).

Section 3.03: ELECTION AND TENURE OF OFFICE.

The Grantors shall appoint the Board through December 31, 1997. At the 1997 meeting of members one (1) member of the Board shall be elected to serve a one (1) year term. The remaining members of the Board shall be elected for two (2) year terms and all subsequent elections for membership to the Board shall be for two (2) year terms. Their term of office shall begin on the first day of January.

Section 3.04: VACANCIES.

Vacancies in the Board of Directors may be filled by a majority vote of the remaining Directors, though less than a quorum, or by a sole remaining Director, and each Director so elected shall hold office until his successor is elected at an annual meeting of members or at a special meeting called for that purpose.

The members may elect a Director to fill any vacancy not filled by the Directors, and may do so at an annual meeting or special meeting called for that purpose.

A vacancy or vacancies shall be deemed to exist in case of the death, resignation or removal of any Director, in case of an

amendment to these By-Laws increasing the number of Directors, or in case the members fail, at any time, to elect the full number of authorized Directors.

If the Board of Directors accepts the resignation of a Director tendered to take effect at a future time, the Board, shall have the power to appoint a successor to take office when the resignation shall become effective.

No reduction of the number of Directors shall have the effect of removing any Director prior to the expiration of his term of office.

Section 3.05: REMOVAL OF DIRECTORS.

The entire Board of Directors or any individual Director may be removed from office by a two-thirds (2/3) vote of the members at a special meeting called for that purpose.

Section 3.06: PLACE OF MEETINGS.

Meeting of the Board of Directors shall be held within the subdivision, as designated for that purpose from time to time by resolution of the Board of Directors or written consent of all members of the Board. During any time that no adequate facility is available to hold such a meeting within the subdivision, the Board may designate a meeting place outside the subdivision, but as close thereto as practicable. Any meeting shall be valid, wherever held, if held by the written consent of all members of the Board, given either before or after the meeting, and filed with the Secretary of the Corporation.

Section 3.07: ORGANIZATIONAL MEETINGS.

The organizational meeting of the Board of Directors shall be held each year immediately following the adjournment of the annual meeting of the members.

Section 3.08: OTHER REGULAR MEETINGS.

Regular meetings of the Board of Directors shall be held immediately following the adjournment of the annual meeting of the members and at least quarterly, on dates to be set from time to time by the Board of Directors.

If said day for the meetings, except for the meeting that immediately follows the annual meeting of the members, shall fall upon a holiday, such meetings shall be held on the next succeeding business day thereafter. Notice of the time and place of annual, regular or special meetings of the Board of Directors shall be mailed or delivered to all members, or posted in at least one (1)

prominent place within the Subdivision at least ten (10) days prior to such meetings.

Section 3.09: SPECIAL MEETINGS -- NOTICES.

Special meetings of the Board of Directors for any purpose or purposes shall be called at any time by the President, or if he is absent or unable or refuses to act, by any Vice-President, or by any two (2) Directors.

Written notice of the time, place and nature of any special business to be considered by special meetings shall be posted in the manner as provided for regular meetings at least seventy-two (72) hours prior to the time of the holding of the meeting, delivered personally to the Directors or sent to each Director by letter or by telegram, charged prepaid, addressed to him at his address as it is shown on the records of the Corporation, or if it is not so shown on such records or is not readily ascertainable, at the place in which the meetings of the Directors are regularly held.

In case such notice is mailed or telegraphed, it shall be deposited in the United States mailed or delivered to the telegraph company in the place in which the principal office of the Corporation is located at least ninety-six (96) hours prior to the time of the holding of the meeting. In case such notice is delivered personally as above provided, said delivery shall be at least seventy-two (72) hours prior to telegraphing, or delivery as above provided and shall be due, legal and personal notice to such Director.

Section 3.10: WAIVER OF NOTICE.

When all the Directors are present at any Directors' meeting, however called or noticed, and sign a written consent thereto on the records of such meeting, or, if a majority of Directors are present, if those not present sign, in writing, a waiver of notice of such meeting, whether prior to or after the holding of such meeting, which said waiver shall be filed with the Secretary of the Corporation, the transactions thereof are as valid as if had at a meeting regularly called and noticed, provided that in no case shall a meeting be valid unless the notice of the meeting has been posted as required by this Article and no resolution shall be validly adopted without a meeting during any time there are members other than Grantor.

Section 3.11: MEETINGS BY TELEPHONE.

With the consent of all the Directors, meetings may be held by conference telephone or by other communication method which allows all Directors to have vocal communication, provided the

meetings are properly noticed and posted as required by this Article.

Section 3.12: NOTICE OF ADJOURNMENT.

Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place be fixed at the meeting adjourned.

Section 3.13: QUORUM

A majority of the number of Directors as fixed by the Articles of Incorporation or By-Laws shall be necessary to constitute a quorum for the transaction of business, and the action of a majority of the Directors present at any properly held meeting at which there is a quorum, when duly assembled, is valid as a corporate act; provide that a majority of the Directors present, in the absence of a quorum, may adjourn from time to time, but may not transact any business.

Section 3.14: RIGHT OF ATTENDANCE AT MEETINGS.

All meetings of the Board of Directors and committees of the Board shall be open to all members provided that members who are not members of the Board may not participate in any deliberation or discussion unless authorized expressly by the vote of a majority of a quorum of the Board. The Board may, however, with the approval of a majority of a quorum of the Board, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, or potential litigation involving the Association, and business of a similar nature. The nature of all Business to be considered at any executive session shall first be announced in the open meeting.

ARTICLE IV  
OFFICERS

Section 4.01: OFFICERS.

The officers of the Corporation shall be a President, a Vice-President, a Secretary and a Treasurer. The Corporation may also have, in the discretion of the Board of Directors, one or more additional vice-presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of this Article. One person may hold two (2) or more offices, however no person may simultaneously hold the positions of President and Secretary.

Section 4.02: ELECTION.

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of the Section



headed, "Subordinate Officers, etc.," or the Section headed, "Vacancies," of this Article shall be chosen annually by the Board of Directors, and each shall hold office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 4.03: SUBORDINATE OFFICERS, ETC.

The Board of Directors may appoint such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the By-Laws or as the Board of Directors may, from time to time, determine.

Section 4.04: REMOVAL AND RESIGNATION.

Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board, or, except in case of an officer chosen by the Board of Directors, by any officer upon whom such power of removal may be conveyed by the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors or to the President, or to the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05: VACANCIES.

A vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled in the manner prescribed in the By-Laws for regular appointments to such office.

Section 4.06: PRESIDENT.

The President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. He shall preside at all meetings of the members and at all meetings of the Board of Directors. He shall be ex officio, a member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of President of a Corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or the By-Laws.

Section 4.07: VICE-PRESIDENT.

In the absence or disability of the President, the Vice-Presidents, in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice-Presidents designated by the Board of Directors, shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon the President. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or By-Laws.

Section 4.08: SECRETARY.

The Secretary shall keep, or cause to be kept, a book of minutes at the principal office of the Corporation or such other place as the Board of Directors may order, of all meetings of Directors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of votes present or represented at Directors' meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office a register showing the names of the members and their addresses; the number of votes held by each; the number and date of any certificates issued for the same (if the Corporation causes certificates to be issued to evidence membership in the Corporation), and the number and date of cancellation of every certificate surrendered for cancellation.

Section 4.09: TREASURER.

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, surplus and any monies and funds handled for the members. The books of account shall, at all reasonable times, be open to inspection by any Director.

The Treasurer shall deposit monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors; shall render to the President and Directors, whenever requested, an account of all his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or by the By-Laws.

ARTICLE V  
EXECUTIVE AND OTHER COMMITTEES

Section 5.01: EXECUTIVE AND OTHER COMMITTEES.

The Board of Directors may appoint an Executive Committee, and such other committees as may be necessary from time to time, consisting of at least two (2) of its members and with such powers as it may designate, consistent with the Restrictions, the Articles of Incorporation and By-Laws and of the Non-Profit Corporation Laws of the State of New Mexico. Such committees shall hold office at the pleasure of the Board.

ARTICLE VI  
CORPORATE RECORDS AND REPORTS -- INSPECTION

Section 6.01: RECORDS.

The Corporation shall maintain adequate and correct accounts, books and records of its business and properties, and the business and properties of the Owners with which it is entrusted. All of such books, records and accounts shall be kept at its principal place of business in the State of New Mexico, as fixed by the Board of Directors from time to time.

Section 6.02: INSPECTION OF BOOKS AND RECORDS.

The membership register, books of account and minutes of members' meetings or Board of Directors' meetings (except for the minutes of the executive sessions) and of committees of the members or Board shall be made available for inspection and copying by any member of the Association or by such member's duly appointed representative at any reasonable time at the office of the Association or at such other place within the subdivision as the Board shall prescribe, for any purpose reasonably related to the member's interest as a member. The Board shall establish reasonable rules as to the notice to be given to the custodian of records by the members desiring to make the inspection, the hours and days of the week when inspection may be made, and the cost of reproducing copies of documents requested by a member.

Section 6.03: CERTIFICATION AND INSPECTION OF BY-LAWS.

The original or a copy of these By-Laws, as amended or otherwise altered to date, certified by the Secretary, shall be open to inspection by the members of the Corporation in the manner provided by law.

Section 6.04: CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by such person or persons and in such manner as shall be determined from time to time by resolution of the Board of Directors.

Section 6.05: CONTRACT, INSTRUMENTS -- HOW EXECUTED.

The Board of Directors, except as in the By-Laws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge the Corporation's credit, or to render the Corporation liable for any purpose or to any amount.

Section 6.06: ANNUAL REPORT.

The Board of Directors of the Corporation shall cause to be prepared and sent to the members upon request within sixty (60) days of the last day of the period covered, a balance sheet as of the last day of the period covered and operating (income) statement for the Corporation's fiscal years.

The operating statement shall include a schedule of assessments received and receivable identified by the lot or other identification of the interest assessed and the names of the person or entity assessed.

The Board of Directors shall cause to be prepared and sent to the members upon request sixty (60) days before the beginning of each fiscal year, a tentative operating statement (budget) for that year.

If, in any year, the income of the Association exceeds \$100,000.00, the Board of Directors shall employ a Certified Public Accountant to conduct an audit of the Association's fiscal transactions and shall distribute copies of the audit to the members.

ARTICLE VII  
MEMBERSHIP

Section 7.01: MEMBERSHIP.

Each Owner, by virtue of being an Owner and during such time as such Owner remains as Owner, shall be a member of the Association. The term, "Owner", shall be defined in the Re-

strictions and shall mean as to property whose ownership gives rise to membership in this Corporation the person or entity holding the beneficial ownership of the fee, including a purchaser under a contract of sale. It is the duty of each person who becomes an Owner or who ceases to become such an owner to notify the Association, in writing, within thirty (30) days, giving the date and recording date of the instrument transferring title, a copy of such instrument and addresses to which notices are to be sent. The change and transfer of memberships shall be made in a register kept at the principal office of the Corporation. In the case of any dispute, the Board of Directors shall decide, pursuant to the provisions of the Restrictions, who is a member of this Corporation.

Section 7.02: CLASSES OF MEMBERSHIP.

The Association shall have one (1) class of membership.

All members shall be entitled to one (1) vote for each lot owned. When more than one person or entity is an owner of any lot, all such persons shall be members. The vote for such lot shall be exercised as such owners determine, and in no event shall such multiple Owners vote more votes than they are entitled by the lots owned.

Section 7.03: VOTING RIGHTS.

Each member shall be entitled to the votes as provided in this Article on all matters properly submitted for vote to the membership of the Association. Every member entitled to vote at any election of members of the Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the member is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any lot, and any sale, transfer, or conveyance of the beneficial interest of the fee of any lot to a new Owner shall operate to transfer the appurtenant vote rights without the requirement of any express reference thereto. Voting may be by written proxy.

When any provision of the Restrictions, Articles of Incorporation or By-Laws of this Corporation calls for the vote or the consent of the members in any stated percentage, the following rules apply unless the specific language of the provision provides to the contrary:

1. Whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members; and

2. The percentage requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association.

The Board of Directors may close the membership register for a period not exceeding thirty (30) days preceding any meeting, annual or special, of the members and any such meeting shall be conducted and any vote taken on the basis of the memberships shown in the register at the time of closing.

Section 7.04: ASSESSMENTS.

Each member is subject to the following charges and assessments payable to the Association:

1. Maintenance assessments;
2. Delinquency assessments;
3. Assessments for capital improvements; and

4. All other fees or other monies due to the Association for such member.

Section 7.05: MAINTENANCE ASSESSMENT.

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

2. If, at any time, and from time to time during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Association may levy a further maintenance assessment in the amount of such actual or estimated inadequacy.

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

4. The maintenance assessment shall not include any amount for the capital improvement of Common Area which, in any fiscal year, exceeds five percent (5%) of the budgeted gross expenses of the Association and which is not part of such budgeted

gross expenses. Such assessments for extraordinary capital improvements may be levied pursuant to Article 7.07.

5. Until the December 31st immediately following the conveyance of the first lot by Grantor, the annual assessment per assessment share shall not exceed \$204.00. From and after said December 31st, the maximum maintenance assessment may be increased each year not more than a percent increase above the maximum assessment for the previous year equal to a ten percent (10%) increase without a vote of two-thirds (2/3) of the voting power of the members. The percent of increase shall be cumulative from year to year so that an increase not used in one year may be used in a subsequent year, without a vote of the members.

Section 7.06: DELINQUENCY ASSESSMENT.

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

Section 7.07: ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

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

Section 7.08: DELINQUENCY.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the member against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent.

With respect to each assessment not paid within ten (10) days after its due date, the Association may, at its election, require the member to pay a sum (late charge) to be determined by the Association, to pay for the costs of handling the delinquent sum, but not to exceed ten dollars (\$10.00) per each delinquent

assessment. Such a charge shall be considered an additional assessment and collectable with the assessment for which it was charged.

If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate as set from time to time by the Board, however not greater than twenty percent (20%) per annum, and the Association may, at its option, bring an action at law against the owner or owners personally obligated to pay the same, and upon compliance with the provisions of this Article to foreclose the lien against the lot, and there shall be added to the amount of such assessment, the late charge, the costs of preparing and filing the complaint in such action, and, in the event a judgment is obtained, such judgment shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such owner or other owners for the collection of such delinquent assessments.

Section 7.09: NOTICE OF LIEN.

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

Section 7.10: FORECLOSURE SALE.

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

Section 7.11: SUBJECT TO RESTRICTIONS.

The qualifications of members, the different classes of membership, if any, the property, voting and other rights and privileges of members, assessments and dues of members and the method of the collection of such assessments and dues shall be as set forth in the Restrictions and any amendments to the Re-



strictions. The Restrictions are incorporated herein as though fully set out and shall control in the event of any conflict with the provisions of these By-Laws.

ARTICLE VIII  
CORPORATE SEAL

Section 8.01: CORPORATE SEAL.

The corporate seal, if any, shall be circular in form, and shall have inscribed thereon, the name of the Corporation, and the date of its incorporation, and the words "New Mexico".

ARTICLE IX  
AMENDMENTS TO BY-LAWS

Section 9.01: BY MEMBERS.

New By-Laws may be adopted, or these By-Laws may be repealed or amended by the members at their annual meeting, or at any other meeting of the members called for that purpose, by a vote of members entitled to exercise a sixty-six and two thirds percent (66-2/3%) of the voting power of the Corporation, or by the written assent of such members, including the vote of written assent of the members entitled to exercise sixty-six and two thirds percent (66-2/3%) of the voting power of the Corporation. So long as the Grantor owns any Lots, the consent of the Grantor is required to adopt new By-Laws or to amend or repeal these By-Laws. So long as the Grantor owns any Lots, amendment to the By-Laws shall require the written approval of VA or FHA.

Section 9.02: RECORD OF AMENDMENTS.

Whenever an amendment or new by-law is adopted, such amendment or new by-law shall be copied in the Book of By-Laws with the original By-Laws, in the appropriate place. If any By-Laws or By-Law is repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted or written assent was filed, shall be stated in said Book.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned being the President and Secretary of Signal Hill Homeowners' Association hereby assent

to the foregoing By-Laws, and adopt the same as the By-Laws of said Corporation.

Dated: January 23<sup>d</sup>, 1997.

Charles A. Haegelin  
CHARLES A. HAEGELIN, President

John A. Myers  
JOHN A. MYERS, Secretary

ALBERT\JAM\LEGALDOC\BYLAWS



# **Declaration of Covenants, Conditions and Restrictions**

Signal Hill  
Homeowners' Association, Inc.



## RESTRICTIONS OF SIGNAL HILL SUBDIVISION

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

[Recorded in the State of New Mexico, County of Bernalillo Real Estate Records on January 16,  
1997 in Book 97-2, Pages 1629-1645, as Document No. 97005011.]



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## SIGNAL HILL SUBDIVISION RESTRICTIONS

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

THIS DECLARATION is made as of December 1996 by Curb, Inc., a New Mexico corporation, with respect to that certain real property situate in Bernalillo County, New Mexico and more particularly described as follows:

All of the SIGNAL HILL SUBDIVISION, as the name is shown on the Plat thereof recorded in the Bernalillo County, New Mexico Real Estate Records on January 6, 1997, in Vol. 97C, Folio 5, as Document No. 97001220.

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

It is the purpose of this Declaration to create a planned unit residential development consisting of sixty-four (64) attached or detached single family dwellings with each dwelling to be located on an individually owned lot on private streets, which private streets are constructed within easements encumbering the lots, and with portions of the property being owned by the Association of Lot Owners for the benefit of the Lot Owners.

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

### ARTICLE 1 Definitions

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

#### Section 1.01: Architectural Control Committee.

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

#### Section 1.02: Association.

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

#### Section 1.03: Board.

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

Section 1.04: Common Area.

The term "Common Area" shall mean portions of the Subdivision which have been or will be conveyed to the Association for the benefit of the Lot Owners. The Common Area within the Subdivision in Tract A, as shown on the Plat.

Section 1.05: Drainage/Landscape Obligations.

The term "Drainage/Landscape Obligations" means the obligation to construct the drainage improvements necessary to convey to a future storm drain constructed in Signal Avenue, the storm water from the Subdivision, alter the drainage pond within Tract "A", vacate the drainage easement encumbering Tract "A", amend the Site Plan to reflect the vacation of the drainage easement and the removal of the drainage improvements, and landscape the area presently encumbered with the drainage easement pursuant to the Landscape Plan.

Section 1.06: Easement Area.

The term "Easement Area" shall mean certain beneficial interests in real property including Improvements thereon owned or controlled by the Association or owned by the public or the Lot Owners but maintained by the Association for the common use and enjoyment of the Association members. The Easement Areas to be maintained by the Association shall be (i) the exterior of all walls or fences of the lots which abut public right-of-way, and (ii) the Private Streets.

Section 1.07: Eligible Mortgagee.

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

Section 1.08: Fiscal Year.

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

Section 1.09: Grading and Drainage Plan.

The term "Grading and Drainage Plan" means the grading and drainage plan prepared for the Subdivision by AVID Engineering, Inc., and approved by the City, as amended from time to time.

Section 1.10: Grantor.

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

Section 1.11: Improvements.

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

Section 1.12: Lot.

The term "Lot" shall mean each of the sixty-four (64) Lots designated 1 through 64 on the Plat together [with] the Improvements located on each such Lot.

Section 1.13: Mortgage[/Mortgagee].

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

Section 1.14: Owner.

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

Section 1.15: Plat.

The term "Plat" shall mean all of the real property shown on the plat of Signal Hill Subdivision, as recorded in the Bernalillo County, New Mexico real estate records on January 6, 1997.

Section 1.16: Private Streets.

The term "Private Streets" shall mean the private streets identified on the Plat as Simi Lane, Alta Loma Lane, El Monte Lane, and La Habra Lane and constructed within the Private Access Easements shown on the Plat, including the improvements constructed thereon including the street, curb, gutter, sidewalk, and street trees.

Section 1.17: Site Plan.

The term "Site Plan" shall mean the site development plan including the associated landscaping plan and drainage plan for the Subdivision approved by the City of Albuquerque in City action, numbers Z-96-53, as amended from time to time.

Section 1.18: Subdivision.

The term "Subdivision" shall mean the Planned Residential Development subdivision created by and subject to this Declaration.

Section 1.19: Subdivision Restrictions.

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

ARTICLE 2

Property Subject to Subdivision Restrictions

All of the property shown in the Plat.

ARTICLE 3

Permitted and Prohibited Uses of Property

Section 3.01: Permitted Uses of Property Within the Subdivision.

a. Improvements and development within the Subdivision shall be limited to residential single family dwellings, either attached or detached having a minimum of 1,200 square feet of heated living area, associated parking, garages, roads and access ways, landscaped areas, and all public or private service and utility facilities related to such uses, including, but not limited to, drainage, sewer, gas, water, electric and communication facilities. No dwelling shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole dwelling by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe these Restrictions. No dwelling may be leased or rented for a period of less than thirty (30) days.

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

Section 3.02: Prohibited Uses of Subdivision.

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

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

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

1. Such signs as may be required by legal proceedings or are useful for such proceedings.

2. During the time of construction of any structure or other Improvement, job identification signs having a maximum face area of twenty-four (24) square feet per sign and of the type usually employed by contractors, subcontractors, and tradesmen.

3. Appropriate safety, directional, and identification and safety signs installed by Grantor, the Association, or required by law.

4. Customary "for sale" or "for rent" signs.

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

d. Except as provided otherwise by this Section, no mobile home, motor home, recreational vehicle, motorcycles, campers, trailers, boat, or similar facility, structure or recreational equipment shall be kept, placed, or maintained within the Subdivision at any time, unless enclosed within a standard size garage or within the side or rear yard so as not to be visible from any street, or the ground floor of neighboring homes. The provisions of this subsection shall not apply to (i) temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration, (ii) a recreational vehicle parked in the driveway or the street for a period not to exceed 24 hours, and (iii) a guest's use of a recreational vehicle for a period not to exceed one week per one hundred and eighty (180) days.

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

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

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

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

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

j. No mechanical device shall be installed or maintained on the roof or exterior surface of any dwelling if such device is visible from the street which the dwelling faces unless screened or enclosed to the satisfaction of the Committee.

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

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

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

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

#### Section 3.03: Common Area/Easement Area.

The Common Area and Easement Area shall be reserved by the Association for the benefit of all Owners pursuant to this Declaration for providing access to the Lots, for controlling storm drainage water, to enhance the value and desirability of the Subdivision for watering, planting, cutting, removing and otherwise caring for the landscaping and for installing, maintaining and repairing signs identifying the Subdivision and utility lines necessary for the maintenance of the Landscaping. The exterior of all Lot walls abutting public right-of-way are Easement Areas. The Association shall have the right and the obligation to maintain the appearance of the exterior of these walls. The Lot Owners shall be obligated to maintain the structural integrity of these walls.

#### Section 3.04: Encroachment Easements.

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

### ARTICLE 4

#### Membership in the Association

##### Voting Rights

#### Section 4.01: Membership.

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

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



Section 4.02: Classes of Membership.

The Association shall have one (1) class of membership.

Each Member shall be entitled to one (1) vote for each Lot owned. When more than one person or entity is an Owner of any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such Owners determine, and in no event shall such multiple Owners vote more votes than they are entitled by the Lots owned.

Section 4.03: Voting Rights.

Each Owner shall be entitled to vote as provided in this Article on all matters properly submitted for vote to the membership of the Association. Every Owner entitled to vote at any election of members of the Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Owner is entitled, multiplied by the number of Directors to be elected. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy.

Section 4.04: Voting Rules.

When any provision of the Subdivision Restrictions calls for the vote or consent of the members in any stated percentage, the following rules apply, unless the specific language of the provision provides to the contrary:

- a. Whenever a vote of the members is required, it is sufficient to obtain the written consent of the same percentage of members;
- b. The percentage requirement shall be a percentage of the total voting power of the Association and not a percentage of the number of members of the Association; and
- c. In any election held pursuant to the requirements of this Declaration, ballots may be transmitted to Owners in the manner provided for the giving of notice.

ARTICLE 5

Organization, Powers and Duties of the Association

Section 5.01: Organization.

- a. The Association shall be organized as a non-profit corporation charged with the duties and empowered with the rights set forth herein. The Association's affairs shall be governed by this Declaration, the Articles of Incorporation and the By-Laws.
- b. In the event that the Association, as a corporate entity, is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by this Declaration, the Articles of Incorporation and the By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.
- c. The President and Secretary of the Association, or any three (3) members of the Board of Directors, may execute, seal, acknowledge and record a certificate of identity stating the names of all of the members of the then current Board and then current Committee, if any.

The most recently recorded affidavit shall be conclusive evidence of the identity of the persons then composing the Board and Committee in favor of any person relying thereon in good faith.

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

e. The Board shall be appointed by and serve at the pleasure of the Grantor, through December 31, 1997, thereafter the Board shall be elected by the Members.

#### Section 5.02: Powers and Authority of the Association.

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

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

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

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

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

1. To contract and pay for, or otherwise provide for, the improvement, maintenance, restoration, and repair of the Common Area and/or Easement Area and all Improvements located thereon;

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

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

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

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

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

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

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

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

10. To perform the Drainage/Landscaping Obligations.

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

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

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

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

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

d. With respect to the Common Area, the Association shall exercise control over the Common Area, but only for the purpose of carrying out the purposes of these Restrictions. The Association shall have no authority to mortgage, sell or convey Common Area or any part thereof, unless approved by the two-thirds (2/3) vote of the Members excluding the Grantor except that the Association shall have the power and authority from time to time without a vote of the members to grant and convey easements or rights of way, in, on, over, or under any Common Area, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder wires, conduits and other equipment for the transmission of electricity and signals for lighting, heating, power, communication, cable television and other purposes, and for the necessary attachments in connection therewith; and public and private sewers, storm water ponding areas, storm water drains, storm water ponding areas [sic], land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection with the foregoing. The Association shall have no authority or power to deny any owner access to their Lot from the Private Streets.

e. The Association may, from time to time and upon such terms and conditions as it may deem appropriate, agree with the governing body of any other subdivision to jointly manage the

affairs of the Subdivision, to jointly hire a manager, or jointly to engage in other activities not inconsistent with the Subdivision Restrictions.

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

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

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

#### Section 5.03: Liability of Members of Board.

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

#### Section 5.04: Duties and Obligations of the Association.

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

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

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

d. The Association shall maintain, or provide for the maintenance of, the Common Areas, the Easement Areas and all Improvements thereon, including specifically the drainage pond within the Common Area and the street, curb, gutter, sidewalk and landscaping within the Private Street Easement Area.

e. The Association shall maintain or provide for the maintenance of all landscaping and vegetation (including without limitation, grass, mass plantings, shrubs and trees) on Common Area and Easement Areas and shall keep such vegetation properly trimmed, mowed, cut, watered, fertilized, planted and replaced so that it provides an attractive appearance, however the Association may elect not to maintain landscaping within the Private Street easements, in which event this landscaping shall be maintained by the individual lot owners.

f. The Association may employ the services of a corporate or individual manager to manage the affairs of the Association and, upon such conditions as are otherwise advisable by the Association, the Association may delegate to the manager any of its powers under the Subdivision Restrictions. No management agreement entered into between the Association and any professional management company (whether or not such professional management company

is owned or controlled by the Grantor) shall provide for a term in excess of two (2) years and all such agreements shall permit the Association to terminate for cause upon not more than thirty (30) days' prior written notice and all such agreements shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

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

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

2. Liability Insurance: The Association shall procure and maintain comprehensive public liability insurance in the amount of at least one million dollars (\$1,000,000) per single occurrence for bodily injury, death and property damage suffered by the public or any Owner and his family, guest, agents, employees or invitees occurring in, on or about the Common Areas. Such policy shall insure the Owners and the Association and its officers, directors, employees and agents, including expressly the professional management company and its officers, directors, employees and agents and shall further expressly cover legal liability arising from lawsuits related to employment contracts of every nature to which the Association is a party. Such policy shall be issued by insurers of recognized responsibility authorized to do business within the State of New Mexico and shall require at least ten (10) days' prior written notice of cancellation or substantial modification (including cancellation for nonpayment of premiums) to the Association and to any Mortgagee having a first lien against any Lot which is listed as a scheduled holder of such a first mortgage in the policy. The cost of such policy shall constitute a common expense of the Subdivision. Such insurance must not provide for contribution with regard to any policies of liability insurance carried individually by any Owner.

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

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

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

## ARTICLE 6

### Funds, Assessments and Delinquency

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

Grantor for each Lot owned by it hereby agrees to pay, and each Owner of any Lot by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance, is deemed to agree to pay to the Association:

- a. Maintenance assessments;
- b. Delinquency assessments;
- c. Assessments for capital improvements; and
- d. All other fees or other moneys due to the Association from such Owner.

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

#### Section 6.02: Operating Fund.

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

#### Section 6.03: Maintenance Assessment.

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

b. If, at any time and from time to time, during any fiscal year, the maintenance assessment proves or appears likely to prove inadequate for any reason, including non-payment of any Owner's share thereof, the Association may levy a further maintenance assessment in the

amount of such actual or estimated inadequacy, which shall be assessed to all Owners apportioned as provided in subsection a, if approved by a two-thirds (2/3) vote of the members, and approved by Grantor so long as Grantor owns any Lots.

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

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

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

#### Section 6.04: Delinquency Assessment.

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

#### Section 6.05: Assessments for Capital Improvements and Indebtedness.

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

#### Section 6.06: Reserves as Trust Funds.

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

#### Section 6.07: Delinquency.

Each assessment under this Article shall be the separate, distinct and personal debt and obligation of the Owner against whom it is assessed. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not

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

#### Section 6.08: Notice of Lien.

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

#### Section 6.09: Foreclosure Sale.

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

#### Section 6.10: Curing a Default.

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

#### Section 6.11: Cumulative Remedies.

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



Section 6.12: Certificate of Payment.

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

Section 6.13: Commencement of Annual Assessments.

The maintenance assessments provided for in this Article shall commence as to each Lot upon the sooner of (i) the first day of the month following completion of construction of the Improvements on the Lot or (ii) January 1, 1998. Construction shall be deemed completed upon the dwelling's successful completion of its final inspection by the City of Albuquerque. The first such annual assessment shall be prorated for each Lot for the period from the commencement as provided in this section to the start of the next fiscal year following such commencement. In the event that the Association has inadequate revenues to maintain the Common Area and Easement Areas prior to the commencement date for all Lots paying maintenance assessments, January 1, 1998, the Grantor shall meet this shortfall.

ARTICLE 7

Duties and Responsibilities of Owners

Section 7.01: Owner's Responsibility to Repair.

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

Section 7.02: Joint Maintenance by Owners.

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

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

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

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

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

Section 7.03: Parking Areas, Vehicles.

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

Section 7.04: Maintenance of Landscaping.

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

Section 7.05: Observance of Subdivision Restrictions.

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

Section 7.06: Rights of Action.

Each Owner and the Association shall have a right of action against Owners for failure to comply with the provisions of this Article 7 of the Subdivision Restrictions.

ARTICLE 8

Construction and Architectural Control

Section 8.01: Architectural Control Committee.

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

Charles Haeglein

Bo Johnson

Lou Moya

At least one Board member shall serve on the Committee at all times. The Committee shall serve at the pleasure of the Board who shall have the right to appoint, reappoint and discharge members of the Committee at will. A majority of the members of the Committee may appoint one member of the Committee to act on and for the Committee.

Section 8.02: Construction of Improvements.

(a) Before anyone shall commence on any Lot within the Subdivision the installation of, construction of, remodeling of, addition to, or alteration of any Improvement (the term Improvement is defined in Section [1.11], and includes but is not limited to fencing and walls) of whatsoever nature; and before anyone shall paint, texture, repaint or retexture the exterior surfaces of any Improvement, there shall be submitted to the Committee plans and specifications as follows:

(i) Preliminary or tentative plans and specifications which shall clearly show the nature of the work or installation proposed and the location thereof, on the Lot, which such preliminary or tentative plans shall include sufficient description of materials, colors, textures, etc. together with a landscaping plan as shall enable the Committee to evaluate whether the proposed construction, alteration, installation, etc. will harmonize with the motif and style of the Subdivision and be compatible with surround homes;

(ii) After approval of the preliminary or tentative plans, including therein any requirements made by the Committee in the due and proper exercise of its discretion and powers, two complete sets of the final plans and specifications; and

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

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

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

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

The Committee shall have the right and power to disapprove any plans, specification or details submitted to it, if the Committee shall find that the plans and specifications are not in accord with all provisions of this Declaration, or if a design or color scheme submitted is not in harmony and accord with the Subdivision, or surrounding homes, or if the plans and specifications are incomplete.

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

(d) No Improvements can be made within the Subdivision unless in compliance with the Site Plan and the Grading and Drainage Plan.

#### Section 8.03: Design Guidelines.

The Committee may from time to time adopt design guidelines for approval of Improvements. The Committee may grant variances from its Design Guidelines consistent with the Site Plan. The Owner shall be obligated to landscape the front yard of all Lots and the side yard on corner Lots in conformity with the Site Plan within 120 days of the issuance of a certificate of occupancy for the dwellings, pursuant to a landscape plan approved by the Committee.

#### Section 8.04: Estoppel Certificate.

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

#### Section 8.05: Liability.

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

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

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

### ARTICLE 9

#### Protection of Security Interests

##### Section 9.01: Application of Assessments to Mortgagees.

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

##### Section 9.02: Right to Notice.

The Association shall provide all Eligible Mortgagees with timely written notice of any delinquency in the payment of monthly assessments, special assessments or other charges due

the Association by the Owner of a Lot which is subject to a first mortgage held by any Eligible Mortgagee and which delinquency remains uncured for a period of sixty (60) days or more.

Section 9.03: Limitation of Enforcement Against Mortgagee.

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

Section 9.04: Rights of Mortgagee to Information.

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

Section 9.05: Application of Subdivision Restrictions.

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

Section 9.06: Collection of Assessments.

The Mortgagees shall be under no obligation to collect assessments.

Section 9.07: Mortgage Approval.

So long as the Grantor has more than a majority of the voting power of the Association, HUD or VA approval is required prior to the following:

- a. Amendment of the Association's Articles of Incorporation, Bylaws or this Declaration;
- b. Annexation of property to the Association;
- c. Encumbering, conveying or dedicating Common Areas; or
- e. Dissolution of the Association.

ARTICLE 10

Limitation of Subdivision Restrictions on Grantor

Section 10.01: Limitation of Subdivision Restrictions on Grantor.

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

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

- b. Prevent Grantor or its agents, employees, and contractors from erecting, constructing and maintaining on any part or parts of the Subdivision, such structures as may be reasonably necessary for the conduct of its business of completing the work and establishing the Subdivision, including, without limitation, sales offices, model units, general business offices for its staff, employees and contractor, and storage and parking facilities for materials and equipment, and disposing of the Subdivision in parcels by sale, lease or otherwise; or
- c. Prevent Grantor from conducting on any part of the properties its business of completing the work, and of establishing and disposing of the Subdivision;
- d. Prevent Grantor from maintaining such sign or signs on the Subdivision as may be necessary for its sale, lease, or disposition, or the sale, lease or disposition of any Lot.

#### Section 10.02: Use of Subdivision Name.

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

#### Section 10.03: Architectural Control.

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

#### Section 10.04: No Amendment or Repeal.

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

### ARTICLE 11 Miscellaneous Provisions

#### Section 11.01: Amendment or Repeal; Duration.

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

1. The approval by seventy-five percent (75%) vote or written consent of the voting power of the membership in the Association and the consent of the Grantor so long as the Grantor owns any Lots within the Subdivision; and

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

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

b. All of the provisions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owner and to the Association subject, however, to the right to amend and terminate as provided for in this Article, through December 31, 2045; provided that these Restrictions shall terminate if, within one (1) year prior to December 31, 2045, there shall be recorded an instrument directing the termination of these Restrictions signed by two-thirds (2/3) of the Owners of record title. Those Restrictions in effect immediately prior to the expiration date shall, subject to the provisions of Section 11.01a., be continued automatically without any further notice, for an additional period of ten (10) years unless within one (1) year prior to expiration of such period those Restrictions are terminated as set forth in this Section. The Private Streets shall serve the Lots in perpetuity, unless released by all of the Owners.

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

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

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

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

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

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

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

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

Section 11.03: Construction; Compliance with Laws; Severability; Singular and Plural; Titles.

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

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

c. Notwithstanding other provisions in this Section, the limitations, restrictions, covenants, and conditions of the Subdivision Restrictions shall be deemed independent and

severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any of such limitations, restrictions, covenants, or conditions shall not affect the validity or enforceability of any other provision.

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

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

#### Section 11.04: Lot Splitting; Consolidation.

a. No Lot within the Subdivision shall be split unless the Board shall have given its written consent.

b. No two or more lots within the Subdivision shall be established into one Lot unless the Board shall have given its written consent.

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

d. The Association can require a change in the voting rights and assessment obligation in any Lot split or consolidation to keep the assessment and voting rights the same after the split or consolidation as they were before.

#### Section 11.05: Obligations of Owners; Avoidance; Termination.

a. No Owner, through the abandonment of his Lot, may avoid the burdens or obligations imposed on him by the Subdivision Restrictions by virtue of his being an Owner.

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

#### Section 11.06: No Partition or Severance of Interests.

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



Section 11.07: Notices; Documents; Delivery.

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

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

If to Grantor or to the Association:

6301 Indian School NE

Suite 680

Albuquerque, New Mexico 87110

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

Section 11.08: Ownership of Property.

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

Section 11.09: Transfer of Common Area.

Upon Recording of this Declaration, Grantor shall transfer and convey to the Association, and the Association shall accept, the Common Areas. The Common Areas may be subject to any or all of the following exceptions, liens, and encumbrances:

- a. The lien of real property taxes and assessments not delinquent;
- b. Such easements and rights of way as may have been offered for dedication to a political subdivision or public organization, or public utility corporation;
- c. Such easements and rights of way, licenses or rights of use on, over, or under all or any part of any such property or structures or Improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;
- d. Obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

e. Any other lien, encumbrance, or defect of title of any kind whatsoever (other than of the type which would, at any time, or from time to time, create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice Owners in their use and enjoyment of such property.

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

CURB, Inc.,  
A New Mexico Corporation  
By: CHARLES HAEGELIN  
President

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO

This instrument was acknowledged before me on January 14, 1997, by Charles Haegelin, President of Curb, Inc., a New Mexico corporation.

WITNESS my hand and official seal.

