

**DECLARATION
of
RESTRICTIVE AND PROTECTIVE COVENANTS
for
QUINTESSENCE SUBDIVISION, UNIT 5
Albuquerque, New Mexico**

To Run With the Land

This Declaration of Restrictive and Protective Covenants for Quintessence Subdivision, Unit 5, Albuquerque, New Mexico, to Run With the Land ("Declaration") is made on this 8th day of March 1999, by PARADISE WEST, INC., a New Mexico corporation ("Declarant"), with reference to the following facts:

Recitals

WHEREAS, Declarant is the owner of that certain tract of land located in the City of Albuquerque, County of Bernalillo, State of New Mexico, more particularly described as follows:

Quintessence Subdivision, Unit 5, an Addition to the City of Albuquerque, New Mexico, as the same is shown and designated on the plat of said addition (the "Plat") filed in the office of the County Clerk of Bernalillo County, New Mexico, on August 6, 1998, in Volume 98C, folio 232 ("Subdivision").

WHEREAS the purpose of this Declaration is to create and carry out a uniform plan for the improvement, development, sale, and use of the lots within the Subdivision; to guard against the erection of poorly designed or proportioned improvements, or the use of unsuitable materials, and to encourage and obtain the erection of well-designed, attractive improvements which are harmonious with one another; to provide for the preservation and maintenance of the values of the improvements within the Subdivision, for the uniformity of the use and occupancy of the lots within the Subdivision, and for covenants and restrictions to run with the land for the benefit, protection, limitation, and enjoyment of the Declarant and all future owners and other parties hereafter acquiring any interest in the lots within the Subdivision.

NOW, THEREFORE, Declarant hereby declares that it has established, and does hereby establish, a general plan and scheme for the improvements, development, uniformity, benefit, protection, and restriction of all of the lots within the Subdivision, subject to which all of such lots, and any portion thereof, shall be owned, held, transferred, sold, conveyed, encumbered, used, and/or occupied; and, further, Declarant does hereby make, declare, and impose the following limitations, restrictions, covenants, and uses to which the lots within the Subdivision may be put, occupied, or used, hereby specifically intending that this Declaration shall constitute covenants to run with the land as to all of the lots within the Subdivision, as provided by law, and shall be binding upon Declarant, all persons claiming by, through, or under



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it, and all future owners and other parties claiming any interest therein, this Declaration being designed for the purpose and with the intention of improving, developing, benefiting, restricting the lots within the Subdivision, and of keeping the lots within the Subdivision desirable, uniform, and suitably residential as hereinafter specified; and Declarant declares that all of the lots within the Subdivision, and any portion thereof, are and shall be owned, held, transferred, sold, conveyed, encumbered, used, and/or occupied subject to the covenants, restrictions, and conditions hereinafter set forth.

1. LOT DIVISION.

No lot shall be split or further subdivided so as to reduce the area thereof, except as necessitated by encroachments or boundary deficiencies caused by errors in surveying and/or construction.

2. LAND USE AND BUILDING TYPE.

No lot or any portion thereof shall be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one (1) single-family detached dwelling. Each dwelling unit shall have an attached private garage for no fewer than two (2) nor more than three (3) automobiles. No portion of any building shall exceed the lesser height of (a) twenty-six feet (26') above the highest finished grade of the residential lot, except for chimneys and television antennae of reasonable size, or (b) the building height limitations provided in the ordinances of the City of Albuquerque. For purposes of this section, a garage shall be considered to be part of the dwelling of which it is attached. The Architectural Control Committee shall have and retain the power to grant variances from these standards on a case-by-case basis for good cause.

3. TEMPORARY USES.

Any lot or portion thereof may be used as a sales office, model home complex, or storage and construction yard during the construction and sales period. All temporary uses as defined herein must have the prior written approval of the Architectural Control Committee, which shall establish written requirements therefor.

4. BUILDING LOCATION.

No building shall be located on any lot in such a manner as to violate the City of Albuquerque zoning ordinance(s), subdivision rules or regulations, or any other public ordinance, rule, or regulation adopted by any governmental authority having jurisdiction over the lots which might pertain to building construction and/or location. Minimum building setback shall be (a) twenty feet (20') from the front property line and five feet (5') from either side property line; or (b) the front yard and side yard setback requirements imposed by the ordinances, rules, or regulations of the City of Albuquerque. Any lot owner proposing to build improvements on his lot must obtain

approval from the City of Albuquerque for the proposed plan for compliance with all applicable ordinances, rules, and regulations in effect at that time regarding building height and front and side yard setbacks. For the purpose of the limitations imposed by these restrictive and protective covenants (but not those imposed by municipal ordinances, rules, or regulations if defined otherwise therein), eaves, steps, patios, walkways, and open porches shall not be considered as part of a building. In no case shall eaves, steps, patios, walkways, or open porches encroach upon another lot.

5. **DWELLING SIZE.**

The heated floor area within the structure of any dwelling, exclusive of porches, garages, or other appurtenant structures, shall not be less than 2,000 square feet. In the case of a residence of more than one story, not less than 1,200 square feet shall be within the ground floor area. In cases of multiple-level dwellings, the Architectural Control Committee shall conclusively determine what constitutes ground floor area as distinguished from basement or other non-ground floor areas.

6. **ARCHITECTURAL STANDARDS.**

No building, garage, fence, wall, basement, shed, outbuilding, or other structure of any kind, whether permanent or temporary, shall be erected, placed, or altered on any lot until construction plans and specifications, and a plan showing the location of the structure, have been approved by the Architectural Control Committee as to quality of materials, harmony of external design with existing structures, and as the location of the structure with respect to topography, setback requirements and finish grade elevations. All construction, whether new construction, alterations, additions, or remodeling, shall be completed within six (6) months from the date of commencement. No lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction and during the construction period, except as permitted by Section 3 above. All lots shall be maintained in a neat, orderly condition at all times. No existing building shall be altered, remodeled, or changed until the plans for such alteration, remodeling, or change have been approved the Architectural Control Committee. No garage may be used as a residential area, and may not be used or altered to a size smaller than is necessary to accommodate two (2) full-sized automobiles, without the prior written consent of the Architectural Control Committee. No clothes lines or paraphernalia for outside drying of clothes is permitted. Any solar equipment erected, placed, or altered on any lot, or on any structure on any lot, the construction plans and specifications for which shall have been previously approved by the Architectural Control Committee, shall be installed or constructed in such a manner as not to be visible from the street.

7. **CONSTRUCTION STANDARDS.**

a. **Exterior finishes** of all residences, structures, or other improvements on the lots shall be wood, adobe, stucco, stone, slumblock, or brick and shall



be natural earth tone colors or subdued colors that will not clash with the exterior colors of other structures either on the subject lot or adjoining lots.

b. **Roofing materials** of all residential units, improvements, and other structures having pitched roofs which are visible from the street shall be clay tile, concrete tile, architectural steel panel roof systems (non-glare), wood shakes, cal shakes (or other brand of similar construction), or "architectural shingles" with a minimum 40-year warranty (to be used on exterior brick elevations only). No other roofing materials will be allowed.

c. **Air conditioning, heating, and other machinery** may not be located on roof areas unless they are shielded from view. Ground-mounted equipment must be located either within the structure, or on a concrete pad at a location shielded from view.

d. **Solar energy collectors** shall be allowed only if constructed in such a manner as to create an aesthetically pleasing appearance with all mechanical and support apparatus to be covered or shielded from view from adjoining properties and the street.

8. ANTENNAE.

No antennae (amateur radio, citizen's band radio, satellite dish, or other antennae) shall be larger than twenty-four inches (24") in diameter, except television antennae of reasonable size, shall be erected upon any lot or dwelling exterior without the prior written approval of the Architectural Control Committee, and, if approved, shall not be visible from the street.

9. NUISANCES.

No noxious or offensive activity or use contrary to the laws of the United States of America or the State of New Mexico, or the ordinances, rules, or regulations of the City of Albuquerque, or any other governmental authority having jurisdiction, shall be carried on upon any lot; nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

10. TEMPORARY STRUCTURES.

No structure of a temporary character (including, but not limited to, a motor home, camper, trailer, boat, recreational vehicle, tent, shack, garage, barn, storage shed, or other outbuilding) shall be stored, used, erected, or constructed on any lot without the prior written approval of the Architectural Control Committee. In no case shall any of the above-mentioned structures be used as a residence, either temporarily or permanently. No campers, house trailers, motor homes, recreational vehicles, or trucks over 3/4-ton, shall be stored or parked permanently on any lot except while parked in an enclosed garage; nor shall such vehicle be permitted to be parked permanently on any street within the Subdivision without prior written



consent of the Architectural Control Committee. No boat of any kind may be stored on any lot except while parked in a closed garage or back yard of reasonable size with appropriate screening or fencing. No vehicle of any type may be repaired on any lot except while parked in an enclosed garage.

11. DRAINAGE AND UTILITY EASEMENTS.

Easements and right-of-way for installation and maintenance of utilities and drainage facilities are reserved as indicated on the Plat, or as subsequently granted and recorded by document.

12. GARDEN WALLS.

Garden walls shall be in conformance with all applicable zoning and building ordinances, rules, and regulations, and any other public ordinances, rules, and regulations pertaining thereto, and in addition:

a. No garden wall, except necessary retaining walls of minimum height, or architectural walls approved with the original construction, shall be erected or allowed to remain nearer the front property line than the front building setback line, without the prior written consent of the Architectural Control Committee.

b. On corner lots, no side street garden wall, except retaining walls of minimum height, or architectural walls approved with the original construction, shall be erected or allowed to remain nearer to the side street than the setback permitted by the City of Albuquerque zoning ordinances, rules, or regulations.

c. Side-yard and rear-yard garden walls are required, and shall not be less than four feet (4') in height above finished grade. All side-yard and rear-yard garden walls shall be constructed on the property lines.

d. There shall be constructed and maintained a minimum five-foot (5') perimeter garden wall along certain lot lines as shown on the Plat. Such wall, once constructed, shall remain in place, shall not be defaced, altered, or removed, and shall be subject to the following:

- (1) The wall shall be a minimum of five-feet (5') in height from the finished grade at the foot of the wall;
- (2) The color of the wall shall not be changed from the original color, except as approved by the Architectural Control Committee;



- (3) Rear-yard entry through the perimeter wall shall not be permitted, without the written consent of the Architectural Control Committee; and
- (4) Walls that have been constructed around electrical switch cabinets or have been located to comply with sight distance requirements shall not be removed or relocated.

e. The owners of lots upon which a perimeter wall may be located shall not remove or alter the wall, and shall be responsible for maintaining the wall in an attractive and safe manner, to the extent that any portion of the wall is located on each such lot owner's property.

f. All garden walls must be approved by the Architectural Control Committee before construction thereof is commenced.

g. All garden walls constructed on common property lines are intended to be party walls with the cost of installation and maintenance to be proportionately shared between or among owners of adjoining lots. The construction of party walls shall be performed at the time of the first home's construction and paid for by the owner of the lot upon which the first home shall be built. The owner(s) of the adjoining lot(s) shall reimburse the owner of the lot upon which the first home shall have been constructed for his, her, or its proportionate share of the wall construction cost to the extent of the construction cost attributable to the construction of walls to the minimum heights provided in this Section 11. The cost of construction of any common wall attributable to the height of such wall in excess of the minimum heights provided in this Section 11 shall be at the expense of the owner(s) of the lot(s) desiring such additional wall height without the obligation of the owner(s) of the adjoining lot(s) to pay for such additional wall height. The owner of the first home to be constructed shall properly document the actual cost of the party-wall construction in order to be accurately and fairly reimbursed for the proportionate share of his, her, or its cost by the owner(s) of the adjoining lot(s). Reimbursement for the proportionate share of the cost of such wall construction to the minimum heights provided in this Section 11 shall be made within 30 days after the receipt of the adjoining lot(s) owner(s) of the invoice therefor from the owner of the lot upon which the first home was constructed. Should a dispute arise concerning the cost of the garden wall construction, or the allocation of such cost between or among lot owners to arrive at their respective proportionate share of such cost, such dispute may be determined by the Architectural Control Committee, whose decision shall be final.



13. **RETAINING WALLS.**

Retaining walls shall be party walls if placed on the common property line of two lots and shall not be removed by either or any property owner, nor the color altered by either or any property owner, without the consent of the other property owner(s) and the Architectural Control Committee.

14. **SIGHT TRIANGLE AT INTERSECTIONS.**

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between a height of three feet (3') and a height of eight feet (8') above the roadways in the Subdivision shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at a point twenty-five feet (25') from the intersection of the street right-of-way lines or, in the case of rounded property corners, at a point twenty-five feet (25') from the point the street right-of-way lines would intersect if extended in a straight line. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at least eight feet (8') above the street level.

15. **SIGNS.**

No signs of any kind shall be displayed to the public view on any lot except one non-illuminated sign of not more than five (5) square feet advertising the property for sale or rent. Additional signs may be used by a builder or realty office to advertise the property during the construction and sales period, subject to the prior written approval of the Architectural Control Committee. Signs reasonably necessary for subdivision identification and direction may be constructed by the Declarant or its successors in interest.

16. **LIVESTOCK, POULTRY, AND PETS.**

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except dogs, cats, or other non-exotic household pets. No animal, fowl, fish, or reptile of any kind may be kept, bred, or maintained for any commercial purpose.

17. **GRADING.**

No lot may be landscaped or regraded in such a manner as to cause the drainage characteristics of the lot to differ materially from the approved grading plan; and in no case shall the drainage characteristics be modified in such a way as to cause damage to adjacent properties. Any modification shall require the prior written approval of the Architectural Control Committee.



18. **MAINTENANCE OF LOTS.**

Owners of vacant lots and owners of residences will be responsible for keeping the lots cleared and free of all weeds, trash, and other detracting conditions.

19. **TREES.**

Each lot owner shall comply in all respects with the Albuquerque Street Tree Ordinance, Section 8-5-1, City of Albuquerque Revised Ordinances (1974), as such ordinance exists as of the date this Declaration is filed for record (herein the "Street Tree Ordinance"). Each lot owner shall submit a street tree plan as required by the Street Tree Ordinance, shall plant, trim, and maintain trees as required thereby, and shall replace dead trees as required thereby. This covenant may be enforced in accordance with Section 21 hereof.

20. **ARCHITECTURAL CONTROL COMMITTEE.**

The Architectural Control Committee is composed of **Samar A. Dababneh, Ellery A. Biathrow, Jr., and John W. Davidson.** Upon the death, resignation, or removal of any member of the Committee, the remaining member(s) shall have full authority to designate one or more successors. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services rendered pursuant to this covenant, nor shall they be held personally liable for the Architectural Control Committee's actions or failures to act. Any members of the Committee may be removed at any time by a majority of the Committee, with or without cause. The Architectural Control Committee shall be authorized to designate an individual or individuals to take any action which could be taken by the Committee as a whole.

All requests for approval required or allowed hereunder shall be submitted to the Committee in writing, together with all documentation reasonably necessary for the Committee to act on the request. The Committee may request additional information should the same be deemed necessary.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within fifteen (15) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction of projects previously submitted to the Architectural Control Committee has been commenced prior to the completion of the construction thereof, approval will not be required and the relevant covenants shall be deemed to have been fully complied with. If the plans and specifications for construction or modification of any construction requiring approval of the Architectural Control Committee are not submitted, then these restrictive and protective covenants may be enforced by any party before or after commencement and/or completion of construction.

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The Architectural Control Committee shall have and retain the power to grant variances from the standards, limitations, and restrictions set forth in this Declaration on a case-by-case basis for good cause.

Each individual member of the Architectural Control Committee employed by or associated with Declarant shall become disqualified to serve on the Architectural Control Committee upon termination of such individual's employment by or association with Declarant, and shall thereafter have no further rights or obligations hereunder; and each such person shall conclusively be deemed to have resigned from the Committee one hundred eight (180) days after the date Declarant conveys title (legal or equitable) to its last remaining residential lot affected by these restrictions.

Declarant shall endeavor to give notice of such resignations by recording in the county record in which these restrictions are filed a notice of such resignations; and shall cause the same to be published as a legal notice in a newspaper of general circulation in the county in which the subdivision is located. Such notice shall be given as soon as practicable after the conveyance of the last lot, as specified above; however, failure to give such notice shall not extend the term of any member of the Committee, nor shall Declarant be liable therefor.

In the event no member remains on the Architectural Control Committee, new members to the Committee can be chosen in the following manner: upon written request of ten percent (10%) of the owners of lots within the Subdivision, a meeting shall be held for the purpose of selecting one or more members to the Committee. Reasonable diligence shall be used to notify the persons owning lots within the Subdivision of the time and place of the meeting, and the purpose thereof.

At such meeting, up to four (4) persons may be selected as members of the Committee. Each lot owner shall be entitled to one (1) vote, cast by the owner's thereof, and the four (4) persons receiving the most votes shall be selected as members of the Committee.

21. DURATION OF COVENANTS.

These restrictive and protective covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these restrictive and protective covenants are recorded; after which time these restrictive and protective covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to terminate or modify the covenants.

22. ENFORCEMENT.

Enforcement to restrain the violation of these restrictive and protective covenants or to recover damages shall be by proceedings at law or in equity in a court



of competent jurisdiction against any person or persons violating or attempting to violate any covenant herein, and may be brought by the owner or owners of any lot or lots or any other person or persons having any interest herein, whether acting jointly or severally. The Architectural Control Committee shall not be obligated to enforce any covenant through legal proceedings

23. SEVERABILITY.

Invalidation of any one of these restrictive and protective covenants by judgment or order of a court of competent jurisdiction shall in no way affect any of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS AND EXCEPTIONS.

Until the Architectural Control Committee is deemed to have resigned pursuant to Section 19 hereof, Declarant shall have the authority to unilaterally change, amend, or modify these restrictive and protective covenants, to modify or amend height and setback requirements as to any individual lot without making such changes or modifications to any other lot(s) provided such change, modification, or amendment does not materially change the character or quality of the lots subject to these covenants and does not materially increase the number of lots within the described area. In addition, amendments and/or exceptions to these restrictions, covenants, and reservations may be made upon written approval of the owners of eighty percent (80%) of the lots in the Subdivision, with each lot being entitled to one (1) vote to be cast by the owner(s) thereof.

Declarant hereby reserves and is granted the right and power to record a Special Amendment to these restrictive and protective covenants to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities to make, purchase, sell, insure, or guarantee first mortgages on any lot covered by these covenants.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of Declarant to make, execute, and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of any first mortgage in order to induce any of the above agencies or entities to make, purchase, insure, or guarantee the first mortgage on such owner's lot.

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