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15

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

(VILLA ENCANTADA, an Addition
to the City of Albuquerque,
New Mexico)

This Declaration of Covenants, Conditions, and Restrictions is made this 31st day of July, 1973, by WOOD BROS. HOMES OF NEW MEXICO, INC., a New Mexico corporation, hereinafter referred to as "Developer."

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with permanent parks, playgrounds, open spaces and other common facilities for the benefit of the community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the community and for the maintenance of the parks, playgrounds, open spaces and other common facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges, and liens, hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in the community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of New Mexico as a non-profit corporation, VILLA ENCANTADA HOMEOWNERS ASSOCIATION, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to the VILLA ENCANTADA HOMEOWNERS ASSOCIATION, a New Mexico non-profit corporation, and its successors.
- (b) "The Properties" shall mean and refer to all of the Existing Property, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (c) "Common Properties and Facilities" shall mean and refer to those areas of land so shown or designated and to those areas of land shown or designated as "Recreation Site", "Parking Area", "Private Roadway", or "C. P. & F." on (1) the AMENDED PLAT OF VILLA ENCANTADA, which AMENDED PLAT was filed on July 31, 1973, in the office of the County Clerk of Bernalillo County, New Mexico; (2) any recorded subdivision plat, amended plat, replat, or supplemental plat of The Properties; and (3) those areas of land designated as "Common Properties and Facilities" in any Supplemental Declaration; all of which land is intended to be devoted to the common use and enjoyment of the Owners of The Properties; and shall include the facilities intended for common use and enjoyment which are or hereafter may be constructed upon, affixed to, placed upon, or otherwise located upon any part of those areas of land designated as "Common Properties and Facilities."
- (d) "Lot" shall mean and refer to any numbered lot shown upon any recorded subdivision plat, amended plat, replat, or supplemental plat of The Properties with the exception of Common Properties and Facilities as heretofore defined.
- (e) "Living Unit" shall mean and refer to (1) any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family, or (2) any lot intended for residential facilities. "Living Unit" shall include the term "Lot" unless such inclusion is expressly or by implication prevented by the text hereof in which reference is made thereto. The use sometimes herein of the term "Lot" in addition to the term "Living Unit," e.g., "Lot of Living Unit," is for purpose of clarity in meaning or for emphasis and is not intended to limit the meaning of the term "Living Unit," or to infer that the term "Living Unit" does not include the term "Lot".
- (f) "Multifamily Structure" shall mean and refer to any building containing two or more Living Units under one roof except when each such Living Unit is situated upon its own individual Lot.
- (g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit buy, notwithstanding any applicable theory of the mortgage, shall not mean or refer to any person or entity who holds title merely as security for the performance of an obligation. However, "Owner" shall include a record owner of the fee simple title to any Lot or Living Unit, who acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.
- (h) "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof, and a "member" shall mean and refer to any one of the members.
- (i) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions and to any amendment or modification of this Declaration and shall include any Supplemental Declaration, unless the context shall prohibit such construction.

- (j) "Supplemental Declaration" shall mean and refer to any instrument which amends, modifies, or terminates this Declaration, or which accomplishes some action taken under this Declaration, and which has been executed and acknowledged in the manner required by the Declaration, and recorded in the office of the Bernalillo County Clerk, and shall be included in the term "Declaration" unless the context shall prohibit such construction.
- (k) "Regulations" shall mean and refer to the rules and regulations promulgated by the Board of Directors of the Association from time to time in the manner permitted by the By-Laws of the Association.
- (l) "Board" shall mean and refer to the Board of Directors of the Association.
- (m) "By-Laws" shall mean and refer to the By-Laws of the Association.
- (n) "Developer" shall mean and refer to WOOD BROS. HOMES OF NEW MEXICO, INC., a New Mexico corporation, its successors, and assigns in interest.
- (o) "Amended Plat" shall mean and refer to AMENDED PLAT OF VILLA ENCANTADA, AN ADDITION TO THE CITY OF ALBUQUERQUE, NEW MEXICO.
- (p) "Class A Lot" shall mean and refer to any Lot upon which there is a residence or single family unit, upon which construction has been completed, and which has been conveyed to an Owner other than the Developer.
- (q) "Class B Lot" shall mean and refer to any Lot upon which a residence or single family unit has not been completed, or upon which a residence or single family unit has been completed but has not been conveyed to an Owner other than the Developer.

ARTICLE II

Property Subject To This Declaration: Additions Thereto

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Bernalillo County, New Mexico, and is more particularly described as follows, all of which real property shall hereinafter be referred to as "Existing Property" or "The Properties;"

Lots numbered One (1) through Eight (8), inclusive, and Lots numbered One Hundred Seventeen (117) through One Hundred Thirty-Six (136), inclusive, of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico, as the same are shown and designated on the Amended Plat of Villa Encantada, which Amended Plat was filed on July 31, 1973, and recorded in Book D-5, at page 168, in the office of the County Clerk of Bernalillo County, New Mexico, and which Amended Plat had been filed previously on April 4, 1973, and recorded in Book D-5, at page 133, in the office of the County Clerk of Bernalillo County, New Mexico.

(The foregoing twenty-eight (28) numbered lots, together with the following-described Common Properties and Facilities, are shown and designated as, and constitute, "PHASE I" Development on the Amended Plat of Villa Encantada, which Amended Plat was filed on February 17, 1976, and recorded in book D- 7, at page 8, in the office of the County Clerk of Bernalillo County, New Mexico.)

AND

Those certain parcels and areas of land, together with the improvements thereon, within the exterior boundaries of PHASE I Development of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico, which are shown or designated as the, and which constitute the, "Common Properties and Facilities" within the exterior boundaries of PHASE I Development of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico and those areas of land shown or designated as "Recreation Site," "Parking Area", "Private Roadway," or "C.P. & F." within the exterior boundaries of PHASE I Development of VILLA ENCANTADA on the Amended Plat of Villa Encantada, which Amended Plat was filed on February 17, 1976, and recorded in Book D- 7, at page 8, in the office of the County Clerk of Bernalillo County, New Mexico.

(b) Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration, as described in sub-section (a) hereof.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights, and obligations of another association may by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established, upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration with the Existing Property except as herein provided.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided-fee interest in any Living Unit or Lot which is subject by the terms of the Declaration to assessment by the Association shall be a member of the Association (a "member"), provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. The rights of membership are subject to the right of the Association, acting by its Board of Directors, to suspend the voting rights to use the

recreational facilities during the period that any assessment payable by the member remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of, default in, or breach of the By-Laws of the Association, the Declaration, or the published Regulations of the Association by the member. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Living Unity which is subject to assessment by the Association. Ownership of such Living Unity shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

(a) Class A. Class A members shall be all of those members as defined in Section 1 of this Article III with the exception of the Developer. Class A members shall be entitled to one vote for each Living Unity in which they hold the interests required for membership as provided in Section 1 of Article III. When more than one person or entity holds such interest or interests in any Living Unit, all such persons or entities shall be members, and the vote for such Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Living Unit.

(b) Class B. The Class B member(s) shall be the Developer. The Class B member(s) shall be entitled to three votes for each Living Unit or Lot in which it holds the interest required for membership as provided in Section 1 or this Article III, provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(2) on December 31, 1975.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Living Unit in which it holds the interest required for membership as provided in Section 1 of this Article III. For purposes of determining the votes allowed under this Section, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted.

ARTICLE IV

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article IV, every member shall have a right and easement of enjoyment in and to the Common Properties and Facilities and such easement shall be appurtenant to and shall pass with the title to every Living Unit.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties and Facilities until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provisions herein, the Developer hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties and Facilities to the Association, free and clear of all liens and encumbrances, except and valorem taxes and assessments for the year in which the conveyance is made and except for all patent reservations, restrictive covenants, easements, and rights-of-way or record, if any, not later than December 31, 1975.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Properties and Facilities and in aid thereof to mortgage or otherwise encumber the Common Properties and Facilities. In the event of a default upon any such mortgage the lender's rights thereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage or other type of secured debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties and Facilities against foreclosure; and;

(c) The right of the Association, as provided in its Articles and By-Laws, acting by the Board of Directors of the Association, to suspend the voting rights and right to use the recreational facilities by a member for any period during which any assessment payable by the member remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of, default in, or breach of the By-Laws of the Association, the Declaration, or the published Regulations of the Association by the member;

(d) The right of the Association to charge reasonable admission and other fees for use of the recreational facilities;

(e) The rights of the Association to dedicate or transfer all or any part of the Common Properties and Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least ninety (90) days in advance of any action taken; and

(f) The right of individual members to delegate their rights and easements of enjoyment in and to the Common Properties and Facilities as provided in Section 4 of this Article IV.

Section 4. Delegation of Use. Subject to this Declaration and in accordance with any applicable provisions of the By-Laws, any member may delegate his right and easement of enjoyment in and to the Common Properties and Facilities to members of his family, his tenants, or contract purchasers from him who reside in his Living Unit. Such member delegating his rights of enjoyment in the Common Properties and Facilities shall notify promptly the Secretary of the Association in writing of the name of any such person (s) to whom the member's rights have been delegated and of the relationship between such person (s) and the member. The delegated rights of such person, to whom the member's rights have been delegated, are subject to all of the provisions, limitations, and conditions hereof to the same extent as those of the delegating member.

ARTICLE V

Covenants for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer for each Lot and Living Unit owned by it within The Properties hereby covenants, and each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements; such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person (s) who was (were) the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and facilities, including, but not limited to, the payment of taxes and insurance thereon and repair, maintenance, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof, and without limiting the generality of the foregoing purposes the Association may pay out of and from such assessments the following:

- (a) The cost of providing water, sewer, garbage and trash collection, electrical, gas and other necessary utility services for the Common Properties and Facilities and, to the extent that the same are not separately metered or billed to each Living Unit for the Living Units.
- (b) The cost of all types of insurance which the Association elects to carry on the Common Properties and Facilities and relating to the activities and duties of the VILLA DE PAZ HOMEOWNERS ASSOCIATION, its officers, directors, employees, and agents.
- (c) The cost of the services of a person or firm to manage the Common Properties and Facilities and to supervise and be responsible for the exterior maintenance and repair of all Living Units, to the extent deemed advisable by the Association together with the services of such other personnel as the Board of Directors of the Association shall consider necessary for the operation of the Common Properties and Facilities.
- (d) The cost of providing such legal, accounting, and other professional services as may be considered necessary to the operation of the Common Properties and Facilities and of the Association.
- (e) The cost of painting, maintaining, replacing, repairing, and landscaping the Common Properties and Facilities and such furnishings and equipment for the Common Properties and Facilities and such furnishing as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire the same; provided, however, that nothing herein contained shall require the Association to paint, repair, or otherwise maintain any Living Unit or any fixtures or equipment located therein.

(f) The cost of any and all other materials, supplies, labor services, maintenance, repairs, taxes, assessments, or the like which the Association is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the Common Properties and Facilities.

(g) The cost of the exterior maintenance and repair of all Living Units.

(h) Any amount necessary to discharge any lien or encumbrance levied against The Properties, or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against any of the Common Properties and Facilities rather than the interest of the Owner of any individual Living Unit.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January, 1975, the annual assessment shall be \$300.00 per Living Unit. From and after January 1, 1975, the annual assessment may be increased by vote of the members, as hereinafter provided, for the next succeeding one year and at the end of each such period of one year for each succeeding period of one year. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties and Facilities, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 of this Article V, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 of this Article V prospectively for any such period provided that any such change shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 of this Article V shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5 of this Article V. The quorum required for any action authorized by Sections 4 and 5 of this Article V shall be as follows:

At the first meeting called, as provided in Section 4 and 5 of this Article V the presence at the meeting of members, or of proxies, entitled to cast sixty (60) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall

be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Class A Lots and Class B Lots, although the assessments on all Class B Lots shall be fixed at twenty-five (25%) percent of the assessments on all Class A Lots.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Class A Lots on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement following the date title to any Living Unit is transferred from the Developer to the original purchaser of the Living Unit following the completion of construction of Living Unit. The annual assessments provided for herein shall commence as to all Class B Lots on the first day of the month following the month in which the provisions of this paragraph first became applicable to such lot.

The annual assessment shall be due and payable in month installments equal to one-twelfth (1/12) of the respective member's total annual assessment for the year. The first annual assessment upon any Class A Lot shall be made for the balance of the assessment period in which title to the Living Unit is transferred from the Developer to the original purchaser of the Living Unit following the completion of construction of the Living Unit. The first annual assessment upon any Class B Lot shall be made for the balance of the assessment period in which the provisions of this paragraph first became applicable to such lot. The assessment for any year, after the first year, shall be due and payable in monthly installments equal to one-twelfth (1/12) of the respective member's total annual assessment, which shall be due and payable on the first day of each month commencing on the first day of July in each calendar year.

The amount of the annual assessment which may be levied for the balance remaining in the first period of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 of this Article V as the remaining number of months in that period bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to The Properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 shall be fixed in the resolution authorizing such assessment.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each living Unit and lot for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien, Remedies of Association.

If any assessment, or any monthly installment thereof, or other installment or part thereof is not paid on the date when due (being the respective date specified in Section 8 of this Article V), then such assessment, or the monthly installment thereof, or other installment or part thereof, shall thereupon become delinquent and shall, together with interest, not to exceed six (6%) per cent per annum, costs, and a reasonable attorney's fee as hereinafter provided, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment, or any monthly installment thereof, or other installment or part thereof, is not paid within thirty (30) days after its due date, the assessment, or the monthly installment thereof, or other installment or part thereof, shall bear interest from the date of delinquency (its respective due date) until fully paid at the rate six (6%) per cent per annum, and the Association may declare the entire amount of such assessment, only a part of which may then be in default, to be immediately due and payable, without notice to or demand upon the then Owner in default, at the option of the Association; and the Association may bring an action at law against the Owner personally obligated to pay the same upon his obligation and/or to foreclose the lien against the property, and there shall be added to the amount of such assessment, interest, costs, and a reasonable attorney's fee. A suit to recover a money judgment for any and all delinquent assessment, together with interest, costs, and a reasonable attorney's fee may be maintained by the Association without foreclosing or waiving the lien therefor created herein.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of a first mortgage now or hereafter placed upon The Properties subject to assessment; provided, however, that such subordination shall apply only the assessment which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges, and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties and Facilities as defined in Article I, Section 1 hereof; (c) all properties exempted from taxation by the laws of the State of New Mexico upon the terms and do the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from such assessments, charges, or liens.

ARTICLE IV

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Units upon The Properties and placed on the dividing line between the lots, if any, shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire of Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article VI shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article VI, each party shall choose one arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved.

ARTICLE VII

Architectural Control Committee

Section 1. Review by Committee. No building, fence, wall or other structure, or any landscaping shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition thereto or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, landscaping, and topography by the Board of Directors of the Association, or by the Architectural Control Committee which shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Architectural Control Committee prior to each Annual Meeting of Members to serve from the close of that Annual Meeting until the close of the next Annual Meeting of Members, and such appointment shall be announced at such Annual Meeting of Members. In the event the Board or the Architectural Control Committee fails to approve or disapprove the plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration, or change has been commenced prior to the completion thereof, approval will not be required, and this Article VII will be deemed to have been fully complied with.

ARTICLE VIII

Exterior Maintenance

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Properties and Facilities, the Association may provide exterior maintenance upon each Living Unit which is subject to assessment under Article V hereof, as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Living Unit upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Living Unit is subject under Article V and, as part of such annual assessment or charge, it shall be a lien upon the Living Unit against which it is made, as well as a personal obligation of the Owner and shall become due and payable in all respects as provided in Article V; provided that the Board of Directors of the Association, when establishing the annual assessment against each Living Unit for any assessment year as required under Article V may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article VIII, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Living Unit at reasonable hours on any day except Sunday.

ARTICLE IX

General Provisions

Section 1. Duration. The Properties will be owned, and, if transferred, shall be transferred, subject to the Declaration. All of the provisions of the Declaration are and shall be considered as "covenants running with the land." All of the provisions of the Declaration shall run with and bind the land, and The Properties, and Members, and Owners, will inure to the benefit of, and will be enforceable by and against the Association, any Owner, or any member, and each of their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date on which the Declaration of Covenants, Conditions, and Restrictions is recorded in the office of the County Clerk of Bernalillo County, New Mexico (January 5, 1973), after which date the Declaration shall be automatically extended for successive periods of ten (10) years each unless a supplemental declaration, executed and acknowledged by the then Owners of two-thirds (2/3) of the Living Units, has been recorded in the office of the County Clerk of Bernalillo County, New Mexico, amending, modifying, or terminating the Declaration.

Section 2. Amendment. The Declaration and all Supplemental Declarations may be amended, modified, or terminated by an instrument entitled "Supplemental Declaration," which amends, modifies, or terminates this Declaration or any Supplemental Declaration and which has been executed and acknowledged by the then Owners of two-thirds of the Living Units and which Supplemental Declaration has been recorded in the office of the County Clerk of Bernalillo County, New Mexico, which shall be effective upon such recordation following the proper execution and acknowledgment thereof.

Section 3. Enforcement. The Declaration, and the Articles, By-Laws, and Regulations of the Association, including all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions thereof, may be enforced by the Association or by any member in any proceeding in law or equity, against any person or entity, including without limitation the Association, any member, and any Owner violating or attempting to violate any provision, restriction, condition, or covenant now or hereafter contained in the Declaration, Articles, By-Laws, or Regulations of the Association, either to restrain such violation or to specifically enforce any such provision, restriction, condition, or covenant, and against The Properties to enforce any lien, assessment, or charge now or hereafter imposed by the provisions of this Declaration. The failure by the Association or any member to enforce any

provision, restriction, condition, or covenant contained in the Declaration, or in the Articles, By-Laws, or Regulations of the Association, shall not constitute a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one or more of the provisions, restrictions, conditions, or covenants of the Declaration by judicial determination or otherwise shall in no way affect any other provisions of the Declaration which shall be and remain in full force and effect.

Section 5. Provisions Obligatory on All Owners. All of the provisions, restrictions, conditions, and covenants of the Declaration, Articles, By-Laws, and Regulations of the Association shall apply to all Owners, except only in that instance, if any, in which the application of any such provision, restriction, condition, or covenant explicitly and expressly exempts Owners therefrom, e.g., where the application is limited to members.

Section 6. Actions by Owners and by Members. The method for Owners and for members to take action, and the evidence thereof, shall be as follows:

(a) Actions by Owners. Whenever any action is required or permitted to be taken by the Owners of Living Units, such action shall be taken (1) at a meeting duly called for such purpose after 30 days' written notice of such meeting and such purpose has been mailed to each Owner at the address of such Owner as reflected in the records of the Association at the time of such mailing, at which meeting a quorum shall be present in the form of the presence of 60% of the then Owners of Living Units in person or by proxy, and such action is assented to by the majority required for such action who shall execute and acknowledge a Supplemental Declaration reflecting the action taken, which Supplemental Declaration shall become effective upon its recordation in the office of the County Clerk of Bernalillo County, New Mexico; or (2) without holding any meeting but obtaining the execution and acknowledgment of a Supplemental Declaration by the then Owners of two-thirds of the Living Units, which Supplemental Declaration shall become effective upon its recordation in the office of the County Clerk of Bernalillo County.

(b) Actions by Members. Those certain actions of the members requiring approval by the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for that purpose by notice sent to all members at least 30 days in advance of that meeting, which notice sets forth the purpose of the meeting, and at which meeting a special quorum is required, as, for example, obtaining the approval of the Association to the additions of property to become subject to the Declaration, the participation by the Association in mergers and consolidations, and the amendments, alterations, changes, or repeals of certain provisions of the Articles of Incorporation, such action may only be taken at such a meeting after proper notice, by the assent of two-thirds of the votes of each class of members who are voting in person or by proxy, and at which meeting a special quorum is present. The special quorum required for such actions of members shall be as follows:

At the first meeting of members duly called for this purpose, written notice of which shall have been mailed to all members at least 30 days in advance of the meeting setting forth the purpose of the meeting, which notice shall be deemed to have been properly mailed, if mailed, postage prepaid, to the last known address of the member as reflected in the records of the Association at the time of such meeting, the presence of members in person, or by their proxies, entitled to cast 60 percent of all of the votes of each class of members shall constitute a quorum.

If the required quorum is not present at any such meeting, another meeting may be called, subject to the same notice requirements, but the required quorum at any subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Holder of Mortgage Entitled to Written Notification from Association of Default by Mortgagor. The holder of any recorded first mortgage on any Living Unit is entitled to written notification from the Association of any default by the Mortgagor of such unit in performance of such Mortgagor's obligation to the Association which is not cured within thirty (30) days, provided that the holder of such recorded first mortgage previously shall have (1) notified the Association in writing of (a) the fact that he is the holder of such recorded first mortgage against a Living Unit, (b) the identity or description of such Living Unit, and (c) the name(s) of the Mortgagor, as well as the name(s) of the Owner of the Living Unit if not the same name as the Mortgagor; (2) furnished to the Association a copy of the recorded first mortgage, the name and permanent address of such mortgage holder, and any other information or documents reasonably requested by the Secretary of the Association; and (3) requested the Association in writing to furnish to such mortgage holder written notification from the Association of any default by the named Mortgagor of the identified or described unit in the performance of such Mortgagor's obligations to the Association which is not cured within thirty (30) days.

Section 8. Restrictions on Acts of Association Without Prior Written Approval of All Holders of First Mortgage on Living Units. Unless all holders of first mortgage liens on Living Units have given their prior written approval, the Association, except to the extent permitted in the following Section 9, shall not;

(a) Change the prorata interest or obligations of any Living Unit for purposes of levying assessments and charges and determining shares of the Common Properties and Facilities and proceeds of the project.

(b) Partition or subdivide any Living Units or the Common Properties and Facilities.

(c) By act or omission seek to abandon the status of VILLA ENCANTADA except as provided by statute, and in conformity with the Declaration, in case of substantial loss to the Living Units and the Common Properties and Facilities.

"all holders of first mortgage liens on Living Units" as used in this sub-paragraph shall mean and be limited to all holders of recorded first mortgage liens on Living Units each of whom previously shall have: (1) notified the Association in writing of (a) the fact that he is the holder of such recorded first mortgage against a Living Unit, (b) the identity or description of such Living Unit, and (c) the name (s) of the Mortgagor, as well as the name (s) of the Owner of the Living Unit if not the same name as the Mortgagor; and (2) furnished to the Association a copy of the recorded first mortgage, the name and permanent address of such mortgage holder, and any other information or documents reasonably requested by the Secretary of the Association.