

(Fourth Amendment to the Declaration of Covenants, Conditions, and Restrictions of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico.)

THIS SUPPLEMENTAL DECLARATION, which constitutes the Fourth Amendment to the Declaration of Covenants, Conditions, and Restrictions of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico, is made this 21st day of April, 1977, by two-thirds or more of the Owners of Living Units in VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico, hereinafter referred to as "Owners".

WHEREAS, WOOD BROS. HOMES OF NEW MEXICO, INC., hereinafter referred to as "Developer", has previously made, executed, acknowledged, filed, and recorded that certain Declaration of Covenants, Conditions, and Restrictions, dated July 31, 1973, which Declaration was filed for record on July 31, 1973, in Book Misc. 325, at pages 15--33, of the records of Bernalillo County, New Mexico; and

WHEREAS, Developer has made, executed, acknowledged, filed, and recorded that certain Supplemental Declaration amending the aforesaid Declaration of Covenants, Conditions, and Restrictions, dated February 17, 1976, which Supplemental Declaration was filed for record on May 28, 1976, in Book Misc. 479 at pages 283--285, of the Records of Bernalillo County, New Mexico; and

WHEREAS, Developer made, executed, acknowledged, filed, and recorded that certain Supplemental Declaration subjecting additional land to the aforesaid Declaration, as amended, dated May 28, 1976, which Supplemental Declaration was filed for record on May 28, 1976, in Book Misc. 479 at pages 286--289 of the Records of Bernalillo County, New Mexico; and

WHEREAS, Developer made, executed, acknowledged, filed, and recorded that certain Supplemental Declaration subjecting additional land to the aforesaid Declaration, as amended, dated April 21, 1977, which Supplemental Declaration was filed for record on April 21, 1977, in Book Misc. 531, at pages 669--673 of the records of Bernalillo County, New Mexico; and

WHEREAS, Owners have deemed it desirable and in keeping with the Covenants, Conditions, and Restrictions of the Declaration, dated July 31, 1973, as amended, to amend the Declaration as hereinafter set forth; and

WHEREAS, pursuant to Article IX, Section 2, Amendment, of the Declaration, Owners, representing two-thirds or more of the Owners of the Living Units subject to the Declaration by this Supplemental Declaration hereby amend the Declaration, dated July 31, 1973, as amended by those Supplemental Declarations, dated February 17, 1976, May 28, 1976, and April 21, 1977, respectively, as hereinafter set forth, and only to the extent hereinafter set forth, intending to confirm, ratify, and approve in all other respects all of the covenants, conditions, and restrictions set forth in the Declaration, dated July 31, 1973, as previously amended, and as amended hereby.

NOW, THEREFORE, Owners declare that the Declaration of Covenants, Conditions, and Restrictions, dated July 31, 1973, which was filed for record on July 31, 1973, and recorded in Book Misc. 325 at pages 15--33, of the records of Bernalillo County, New Mexico, as amended by that certain Supplemental Declaration, dated February 17, 1976, and filed for record on May 28, 1976, and recorded in Book Misc. 479 at pages 283--285 of the records of Bernalillo County, New Mexico, and that certain Supplemental Declaration, dated May 28, 1976, and filed for record on May 28, 1976, in Book Misc. 479 at pages 286--289 of the records of Bernalillo County, New Mexico, and that certain Supplemental Declaration, dated April 21, 1977, and filed for record on April 21, 1977, in Book Misc. 531, at pages 669--673 of the records of Bernalillo County, New Mexico, be, and it hereby is, amended by this Supplemental Declaration; and Owners declare that the real property described in Article II of the Declaration, dated July 31, 1973, together with those additions thereto made by that certain Supplemental Declaration, dated May 28, 1976, and those additions thereto made by that certain Supplemental Declaration, dated April 21, 1977, and such additions thereto that hereafter may be made pursuant to Article II of the Declaration, 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") set forth in the Declaration, dated July 31, 1973, as amended by that certain Supplemental Declaration, dated February 17, 1976, that certain Supplemental Declaration, dated May 28, 1976, and that certain Supplemental Declaration, dated April 21, 1977, and as amended by this Supplemental Declaration.

1. Article I, Definitions, Section 1, of the Declaration is amended hereby to contain the following additional subparagraphs:

"(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."

2. Article III, Membership and Voting Rights in the Association, Section 1, of the Declaration is amended hereby to provide and read as follows:

"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 and right 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 Unit which is subject to assessment by the Association. Ownership of such Living Unit shall be the sole qualification for membership."

3. Article IV, Property Rights in the Common Properties, Subparagraphs (c) and (d) of Section 3, Extent of Members' Easements, of the Declaration is amended hereby to provide and read as follows:

"(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;"

4. Article V, Covenants for Maintenance Assessments, Section 1, of the Declaration is amended hereby to provide and read as follows:

"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, 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."

5. Article V, Covenants for Maintenance Assessment, the first full paragraph of Section 2, of the Declaration is amended hereby to provide and read as follows:

"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:"

6. Article V, Covenants for Maintenance Assessments, Subsection (b) of Section 2, Purpose of Assessments, of the Declaration is amended hereby to provide and read as follows:

"(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 ENCANTADA HOMEOWNERS ASSOCIATION, its officers, directors, employees, and agents."

7. Article V, Covenants for Maintenance Assessments, a new Section 7, of the Declaration is adopted hereby, to read and provide as follows:

"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 Fifty (50%) percent of the assessments on all Class A Lots."

8. Article V, Covenants of Maintenance Assessments, existing Section 7, of the Declaration is renumbered hereby to "Section 8", and the first paragraph of such Section 8 is amended hereby to read and provide as follows:

"Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments shall commence as to all Class A Lots on the date (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement following the date title to any Lot is transferred from the Developer to the original purchaser of the Lot, following the completion of the construction of a residence or single family unit upon the Lot. The annual assessment 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 monthly 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."

9. Section 8, Duties of the Board of Directors, of Article V of the Declaration is renumbered hereby to "Section 9" and is amended hereby to read and provide as follows:

"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."

10. Article V, Covenants for Maintenance Assessments, Section 9, of the Declaration is renumbered hereby to "Section 10" and is amended hereby to read and provide as follows:

"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%) percent 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 of six (6%) percent 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 assessments, 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."

11. Article V, Covenants for Maintenance Assessments, Section 10, of the Declaration is renumbered hereby to "Section 11" and is amended hereby to read and provide as follows:

"Section 11. Subordination of the Lien to Mortgages. The lien of the assessments 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 to the assessments 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."

12. Article V, Covenants for Maintenance Assessments, Section 11, Exempt Property, of the Declaration is renumbered hereby to "Section 12."

13. Article IX, General Provisions, Section 1, of the Declaration is amended hereby to read and provide as follows:

"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 (July 31, 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."

14. Article IX, General Provisions, Section 3, of the Declaration is amended hereby to read and provide as follows:

"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."

15. Article IX, General Provisions, Section 9, is deleted hereby.

I, the undersigned, certify that WOOD BROS. HOMES, INC., a Delaware corporation, is the corporate successor to Wood Bros. Homes of New Mexico, Inc., the "Developer" under that Declaration of Covenants, Conditions and Restrictions of VILLA ENCANTADA, an Addition to the City of Albuquerque, New Mexico, dated July 31, 1973 and recorded in Book Misc. 325, at pages 15--33 of the Records of Bernalillo County, New Mexico; that the following signatures represent the acknowledged signatures of the owners of two-thirds (2/3) or more of the lots subject to the Declaration of Covenants, Conditions and Restrictions as required for amendment of that Declaration as provided for in that Declaration.

WOOD BROS. HOMES, INC.

By Donald M. Martin  
DONALD M. MARTIN  
Vice-President

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

The foregoing instrument was acknowledged before me this 3 day of May, 1977, by DONALD M. MARTIN, Vice-President of WOOD BROS. HOMES, INC., a New Mexico corporation, on behalf of that corporation.

My Commission Expires:

January 29 1978  
( S E A L )

Mary L Allen Trantz  
Notary Public

Lots numbered 17 through 28, inclusive; 41 through 52, inclusive; 69 through 80, inclusive; and 93 through 108, inclusive, constituting 52 lots, owned by WOOD BROS. HOMES, INC.

By Donald M. Martin  
DONALD M. MARTIN  
Vice-President