

THE TANOAN COMMUNITY ASSOCIATION MASTER RESTRICTIONS

A Declaration of Covenants, Conditions and Restrictions

THIS DECLARATION is made this 25th day of September, 1979, by AFFILIATED MORTGAGE & DEVELOPMENT COMPANY, a New Mexico corporation, as to that real property described in Exhibit "A" which is attached to this Declaration and incorporated by reference, and by each other person or entity having an interest in the real property described in Exhibit "A" who executes a consent to this Declaration.

It is hereby declared that all of the described real property is subject to The Tanoan Community Association Master Restrictions, meaning the limitations, easements, restrictions, covenants, terms and conditions set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and transfer of the described real property and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the described real property and its every part. The Tanoan Community Association Master Restrictions shall run with the described real property and shall be binding upon and inure to the benefit of Grantor, the Association, each as defined in this Declaration, each owner of the described real property or any part thereof, and each successor in interest of Grantor, the Association and any such owner.

ARTICLE 1

Definitions

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

Section 1.01. **Association.** The term "Association" shall mean The Tanoan Community Association, Inc., a non-profit New Mexico corporation, and any predecessor or

successor incorporated or unincorporated association, as set forth in the Article entitled "The Tanoan Community Association, Inc."

Section 1.02. **Board.** The term "Board" shall mean the Board of Directors of the Association.

Section 1.03. **Community Street.** Any area owned by The Association over which there is granted the right of vehicular access to the Owners.

Section 1.04. **Common Area.** The term "Common Area" shall mean any real property owned or controlled by the Association intended for the common use and enjoyment of the Association members. In addition, the common area includes for the purposes only of requiring the Association's upkeep and maintenance of such area, any berm, planter area, and green strip within the subdivision and adjacent to any street or public right of way.

Section 1.05. **Grantor.** The term "Grantor" shall mean Affiliated Mortgage & Development Company, a New Mexico corporation, and its successors and assigns. Although other corporations or entities may execute these documents as a grantor or declarant, only Affiliated Mortgage & Development Company and its successors or assigns shall have the rights of Grantor under and pursuant to these Declarations.

Section 1.06. **Improvements.** The term "improvements" shall include but not be limited to buildings, sheds, utility buildings, roads, driveways, parking areas, fences, retaining walls, stairs, decks, hedges, windbreaks, poles, antennas, signs, utility or communication installations (whether above or underground), retaining structures, waterways, and any structures and excavations of any type or kind located on the Common Area.

Section 1.07. **Golf Course Lots.** The term "Golf Course Lots" shall mean any lot or unit that fronts or abuts Tanoan Golf Course, including Common Areas.

Section 1.08. **Lot.** The term "Lot" shall mean any numbered or lettered lot shown on any subdivision map except those areas owned by The Association. "Lot" shall also mean any unit within a project and the project common area if a parcel separate from the units. Upon the splitting of any lot or the consolidation of any lots, "lot" shall mean each parcel or unit into which such lot has been split or the parcel or unit consisting of the lots so consolidated, as the case may be. The term "lot" shall include the country club tract.

Section 1.09. **Membership; Member.** The term "Membership" shall mean the membership in The Association by owners of lots and project units within the subdivision as set forth in the Article entitled "The Tanoan Community Association". The term "Member" shall mean the person or persons holding such membership.

Section 1.10. **Mortgage; Mortgagee.** The term "Mortgage" shall mean a deed of trust, an assignment of a leasehold interest for security purposes and the seller's interest under a contract of sale of real property, as well as a mortgage; and the term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, an assignee of a leasehold interest assigned for security purposes, or the seller under a contract of sale of real property within the Subdivision, as well as a mortgagee.

Section 1.11. **Neighborhood.** The term "Neighborhood" includes any Area within the subdivision consisting of lots and any neighborhood Common Area for the exclusive use of such lots, which has been designated as a neighborhood pursuant to a declaration filed by Grantor pursuant to the Article entitled "Neighborhoods and Neighborhood Associations".

Section 1.12. **Neighborhood Assessments.** The term "Neighborhood Assessments" shall mean assessments levied by Neighborhood Associations.

Section 1.13. **Neighborhood Association.** The term "Neighborhood Association" shall mean a non-profit membership corporation, and any predecessor or successor

incorporated or unincorporated association as set forth in the Article entitled "Neighborhoods and Neighborhood Associations".

Section 1.14. **Neighborhood Common Areas.** The term "Neighborhood Common Areas" shall mean any real property owned or controlled by a Neighborhood Association and intended for the common use and enjoyment of the members of that Neighborhood Association.

Section 1.15. **Notice.** The term "Notice" shall mean a notice delivered pursuant to Section 14.08.

Section 1.16. **Operating Fund.** The term "Operating Fund" shall mean the fund created pursuant to Section 8.02.

Section 1.17. **Owner.** The term "Owner" shall mean the person or persons, including Grantor, holding the beneficial ownership of the fee (including the purchaser under a contract of sale of real property within the Subdivision) and shall not include persons holding only a security interest; provided, however, that for the purposes of the Article entitled "Property Classification and Use", unless the context otherwise requires, "owner" shall include the family, invitees, licensees, tenant, subtenant and lessors of any owner.

Section 1.18. **Planning Committee.** The term "Planning Committee" shall mean the committee created pursuant to the Article entitled "Planning Committee".

Section 1.19. **Security Service.** The term "Security Service" shall include personnel and security devices employed by The Association to control access to The Tanoan Community, and enforce the Subdivision rules and regulations of The Association.

Section 1.20. **Planning Committee Rules.** The term "Planning Committee Rules" shall mean rules adopted by the Planning Committee pursuant to authority given to them by these Restrictions. [Rules shall be separately adopted for Residential and Commercial Areas.]

Section 1.21. **Project.** The term "Project" shall mean any condominium project, any planned unit development and any other multiple unit residential development

consisting of project units, plus common areas jointly owned or controlled by the owners of the project units. The term "project" shall not include any development where the units consist in whole or in part of detached single family or duplex dwellings, and where ingress or egress across Neighborhood Common Areas is not required for access to the project units or for vehicular parking for such units.

Section 1.22. Project Area. The term "Project Area" shall mean all of the real property within the subdivision lying within the boundaries of any project.

Section 1.23. Project Committee. The term "Project Committee" shall mean the governing body of any project which may or may not be the same as the Board of Directors of any Neighborhood Association.

Section 1.24. Project Unit. The term "Project Unit" or "Unit" shall be defined as the individually owned or controlled portion of a project including units of a condominium and the individual lots in a planned unit development that are not common areas of the project.

Section 1.25. The Tanoan Community. The term "The Tanoan Community" shall mean all the property subject to or made subject to The Tanoan Community Master Restrictions.

Section 1.26. The Tanoan Community Master Restrictions. The terms "The Tanoan Community Master Restrictions", "Protective Covenants" or "these Restrictions" shall mean, with respect to all property within the subdivision, the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and with respect to any property which is annexed to The Tanoan Community, as these Restrictions may from time to time be supplemented or modified by the provisions of a declaration, if any, recorded with respect to such annexed property.

Section 1.27. Record; Recorded. The term "Record" or Recorded" shall mean, with respect to any document, that the document shall have been recorded in the Office of

the Recorder of the county in which the real property to which the document relates is located.

Section I.28. **Residential Area.** The term "Residential area" shall mean any Area within the subdivision not part of the Commercial Area.

Section I.29. **Setback.** The term "Setback Lines" means the shortest distance between a dwelling house, or other structure referred to and the given front, side or rear lines of the particular lot, unit or site. The setback lines established in subdivision maps or deeds executed by Grantor, or by project maps or plans approved by the government agency having jurisdiction, or by resolution of the Planning Committee, for any dwelling house or other structure from any front, rear or side lot lines shall be deemed and construed to be the minimum distance between said dwelling house or other structures and said front, rear or side lot line closet thereto.

Section I.30. **Street.** The term "Street" shall mean and refer to any public street, public highway, or other public thoroughfare shown on a subdivision map, of any land now or hereafter subjected to these Restrictions or contiguous to the real property designated on any of said maps, no matter how designated.

Section 1.31. **Subdivision.** The term "the Subdivision" shall be defined as the real property described in Exhibit "A" plus all annexations of property as may be made to The Tanoan Community Association Master Covenants as provided by Article 2.

Section I.32. **Subdivision Map.** The term "Subdivision Map" shall mean any final subdivision or parcel map, including final condominium plans.

Section I.33. **Subdivision Rules.** The term "Subdivision Rules" shall mean the rules made by the Board pursuant to the authority granted by these Restrictions or the Articles of Incorporation or By-Laws of The Association as they are from time to time in effect.

Section 1.34. The Tanoan Country Club.

The term "The Tanoan Country

Club" shall mean The Tanoan Country Club, Inc., a New Mexico corporation, and any successor incorporated or unincorporated association.

Section 1.35. The Tanoan Country Club Tract.

The term "the Tanoan Country Club Tract", as well as the term "the Country Club Tract", shall mean those lands owned or leased by the Tanoan Country Club for country club purposes, including those lands used for the country club golf course, clubhouse, tennis and swimming facilities, parking and all related facilities. The Country Club Tract shall constitute a single commercial lot.

ARTICLE 2

Property Subject to Restrictions

Section 2.01. Initial Development.

All of that certain real property located in the City of Albuquerque, Bernalillo County, New Mexico, described in Exhibit "A" attached hereto and incorporated herein shall constitute The Tanoan Community.

Section 2.02. The Tanoan Community: Annexation of Subsequent Developments.

Grantor may, pursuant to the following provisions of this section, from time to time and in its sole discretion and without necessity of any approvals, annex real property owned by Grantor or other persons with the permission of such other persons, including the Country Club Tract, to The Tanoan Community.

(a) The annexation of any such property shall become effective when

Grantor shall have recorded the following:

(1) A declaration, which, may consist of more than one document and which shall, among other things, (i) describe the real property which is to be annexed, (ii) set forth or refer to such additional or other limitations, restrictions, covenants and conditions, applicable to such property, (iii) describe any areas to be included within the commercial area, any neighborhood and common areas, and (iv) declare that such property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to The Tanoan Community Master Restrictions; and

(2) A subdivision map with respect to the real property

described in said declaration, except that the annexation of the Country Club Tract shall not require the recording of such a map.

(b) Grantor shall not annex to The Tanoan Community any property

designated on a subdivision map as a lot unless:

(1) The property is described in Exhibit "B" attached hereto and incorporated herein; or,

(2) The Board of Directors approves such annexation if the property is not described in Exhibit "B".

(c) Upon any annexation becoming effective the property covered by such

annexation shall become and constitute a part of The Tanoan Community, and the

Association shall have and shall accept and exercise jurisdiction over such property as a part

of The Tanoan Community.

(d) The declaration referred to above may, with respect to all or any part of

the property described by it, provide for any or all of the following which shall become part

of these Restrictions as applicable to such property:

(1) Such new land classifications not then provided restrictions, covenants and conditions with respect to the use as Grantor deems appropriate for the development of such property; and

(2) With respect to the land classification provided for by these Restrictions, such additional or different limitations, restrictions, covenants and conditions with respect to use as Grantor deems appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to common area lying within such annexed property shall not discriminate between Owners.

ARTICLE 3

Property Classification and Use

Section 3.01.

Purposes of Land Classification and Use.

The purposes of

these limitations and restrictions and the other controls in this Article are to enhance, protect,

establish and maintain the character, value, desirability and attractiveness of the real estate within the subdivision and to insure its proper development as a subdivision.

Section 3.02. Land Classification. All land within the subdivision is classified into one of three (3) areas, the Residential Area, the Commercial Area, and the Common Area. The Common Area may be further classified into common area, neighborhood common area, or project area, and may also form a part of a neighborhood association and The Tanoan Community Association.

Section 3.03. Uses and Restrictions Applicable to Both Residential and Commercial Areas. Each lot and project area in both Residential and Commercial Areas shall be for the exclusive use and benefit of its Owner, subject, however, to all of the following rights, standards, limitations and restrictions.

(a) The Association, or its duly authorized agents, shall have the right at any time, and from time to time, without any liability to the Owner for trespass or otherwise, to enter upon any lot or neighborhood common area for the purpose (1) of maintaining such lot as provided for in these Restrictions, (2) of maintaining project common areas, neighborhood common areas, and (3) of enforcing all of the restrictions set forth in this Article applicable to such lot, project area or neighborhood common area.

(b) Improvements and work where regulated and controlled by this Article, whether performed by the Association or any Owner, may be done only in strict compliance with the provisions of this Article.

(c) Improvements and development within the subdivision shall be limited to residences, apartments, projects, commercial uses, roads and parking areas, recreation facilities or open space and related uses, all public or quasi-public service and utility facilities related to such uses including, but not limited to, sewer, gas, water, electric and communication facilities. In no event shall such lands be used for the purpose of mining,

quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with these Restrictions.

(d) Each lot and any and all improvements from time to time located thereon, including landscaping, shall be maintained by the Owner or Owners thereof in good condition and repair as may be further defined from time to time by the Planning Committee, all at such Owner's sole cost and expense.

(e) No noxious or offensive activity shall be carried on upon any property. No light shall be emitted from any property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any property which is unreasonably loud or annoying; no odor shall be emitted on any property which is noxious or offensive to others; nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their property or in their enjoyment of the common area.

(f) No accessory structures or buildings shall be constructed, placed or maintained upon any property prior to the construction of the main structure; provided, however, that the provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work of improvement permitted by this Article.

(g) No recreational vehicle or mobile home or similar facility or structure shall be kept, placed, maintained or affixed upon any property of any time unless it is unoccupied and not used for dwelling purposes and is placed so that it is screened from streets and neighboring property. The Planning Committee can by rule provide for the placement and screening of mobile homes and recreational vehicles. The provisions of this paragraph and of Section 3.03 (f) shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Article.

(h) Outside clothes lines or other outside clothes drying or airing facilities, above ground trash and garbage receptacles and other maintenance and service facilities shall be maintained only in accordance with the resolution of the Planning Committee and then exclusively within a fenced service yard in such a way as not to be visible from streets and neighboring property.

(i) No garbage, clippings from trees, shrubs or lawns, trash, ashes or other refuse may be thrown, dumped or allowed to accumulate on any property. There shall be no burning of refuse out of doors, except for the burning of natural materials in connection with fire control. Each Owner shall provide suitable receptacles for the collection of refuse. Such receptacle shall be enclosed and screened from public view and protected from disturbance. Solid refuse shall not be placed in any unscreened area for collection more than twenty-four (24) hours prior to the scheduled collection time.

(j) No animals, livestock, horses, insects or poultry of any kind shall be kept, raised or bred, however domesticated; dogs, cats and other household pets may be kept in reasonable numbers providing they are not kept, raised or bred for commercial purposes. Such household pets must be restrained on a leash or otherwise under the control of an individual when in public areas. Horses may be kept in areas specifically approved by resolution of the Planning Committee. Any animal not so restrained or controlled in violation of this subsection may be picked up and impounded by Grantor or the Association without liability and at the Animal Owner's expense and may be turned over to any appropriate pound, animal shelter or animal control officer.

(k) All vacant areas are to be kept free of litter, debris and weeds and are not to be used for the storage of materials except for materials being used for authorized current construction on the areas where stored. No lawn clippings or other garden refuse shall be placed in streets or public view more than twenty-four (24) hours prior to the scheduled pick up time and all such material shall be bagged or in containers.

(l) There shall be no open storage of boats, motor homes, trailers, mobile homes, campers, commercial vehicles over one (l) ton or inoperative vehicles, except in boat or vehicle storage areas designated by Grantor or the Association for such purposes or in accordance with such paragraph (9) hereof. There shall be no overhauling or rebuilding of any vehicle or machine in any driveway or street, or in the front of any property, but such activities are not prohibited inside buildings even if visible through doorways and other openings.

(m) Except for temporary lines used during construction all utility lines, including, but not limited to, electrical, gas, telephone, cable television and other communications shall be underground, except for access ports and above ground transformers.

(n) No chemicals or petroleum products shall be placed or allowed to drain into storm drains or street gutters but this paragraph shall not prevent the application in normal quantities of customary insect, animal or plant control substances, fertilizers and plant foods and paints or protective compounds on lots and improvements within the subdivision even if run off from the property could carry these substances into the storm drain system.

Section 3.04. Uses and Restrictions Applicable to Lots and Project Areas Within the Residential Area. The following additional standards, limitations and restrictions are applicable to the residential area and to the construction, reconstruction, alteration and refinishing of any and all improvements from time to time existing or to be built on any lot or within any project area within the Residential Area. This section does not apply to common areas and neighborhood common areas.

(a) No lot or project area shall be used for any purpose other than residential use and shall not be used in whole or part for any commercial, manufacturing, mercantile or other non-residential purposes and no residence or project unit shall be used as a boarding

house or apartments, except this paragraph shall not be construed to prevent the rental or lease of entire residences and project units by their respective Owners.

(b) No more than one residence shall be constructed on any lot designed for residential purposes unless the lot is specifically designated for project, duplex, triplex, or fourplex construction on Grantor's development plan as it may be amended from time to time, and zoned for such purpose. Provided, however, the Owner of any lot may, with the written approval of the Planning Committee, build attached living quarters for domestic workers or family members.

(c) All improvements shall be constructed either in accordance with applicable building setback lines shown on a subdivision map or deeds or covenants executed by Grantor or by project maps or plans approved by the government agency having jurisdiction or, if the applicable subdivision map, deeds or project maps or plans do not include setback lines, in accordance with setback lines approved by the Planning Committee; provided, however, that if permissible by law, the Planning Committee may permit a variance from such lines upon a determination that such a variance is necessary to facilitate the use of the lot involved and that it does not unreasonably impair the use, value or aesthetic appeal of any common area or other lot.

(d) All lots and project areas shall be landscaped and open areas not covered by patios, swimming pools, porches, driveways and flower beds and other normal and customary improvements shall be planted in grass, or other ground cover (including "Southwestern" style landscaping) approved by the Planning Committee. No yards visible from the street or the golf course shall be covered with rock, gravel or other non-growing ground cover unless specifically approved by the Planning Committee. All dead vegetation, including trees, shall be removed within thirty (30) days. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals to maintain them in a neat and attractive manner.

(e) Any approved detached shed or building must be painted to blend with other structures located on the same lot, unless approved by the Planning Committee and may be no more than one (1) story in height. The right to construct any such structure and the design or other requirements for such structures shall be set by Planning Committee resolution.

(f) Subject to review and change by resolution of the Planning Committee, no signs that are visible from neighboring lots, project areas, common areas, or streets shall be erected or maintained upon any lot or project area except:

(1) Such signs as may be required or reasonably necessary by legal proceedings.

(2) During the time of construction of any structure or other improvement, one (1) job identification sign having a maximum face area of seven (7) square feet per sign for each single family or duplex dwelling and twenty-four (24) square feet for each project unless approved by the Planning Committee; and

(3) Not more than one "for sale" or "for rent" sign having a maximum face area of three (3) square feet.

Section 3.05. Common Area and Neighborhood Common Area: Uses; Restrictions.

The use of common area shall be reserved equally to all Owners of property within the Residential area, and the use of Neighborhood Common Area shall be similarly reserved equally to all Owners of property within the neighborhood, subject, however, to the following limitations and restrictions:

(a) The use of common area shall be subject to the subdivision rules and neighborhood common area shall similarly be subject to the rules of the neighborhood association to which it belongs.

(b) The use of common area and neighborhood common area shall be subject to (i) such easements as may have been offered for dedication or dedicated to public use on a subdivision map, (ii) such easements, licenses and rights of use as may have been reserved at the time of the conveyance of the area by Grantor to the Association, or to the

Neighborhood Association, (iii) such easements or other interests as may from time to time be taken under power of eminent domain, (iv) such other easements as may from time to time be granted or conveyed by the Association or Neighborhood Association pursuant to its powers pursuant to these Restrictions, (v) and the maintenance of entry facilities and signs.

(c) Except to the extent otherwise permitted pursuant to the easements, licenses and rights of use referred to above, the use of common areas, and neighborhood common areas shall be limited to recreational uses and the maintenance of entry features, signs, security facilities, and such other reasonable uses as the Board of Directors may determine by resolution to be for the common interest of the Owners.

Section 3.06. Lots and Project Area: Construction and Alteration of Improvements;

Approval of Plans. The right of an Owner to construct, reconstruct, refinish, alter or maintain any improvement upon, under or above any lot or project area excepting common areas and neighborhood common areas or to make any change in the natural or existing surface drainage thereof, or to install any utility line (wire or conduit) thereon or thereover, shall be subject to all of the following limitations and conditions of this section.

(a) Except to the extent permitted by subsection (c) below, any construction or reconstruction of improvements and structures, or the recoloring, refinishing or alteration of any part of the exterior of, any improvement or structure upon any lot or project area is absolutely prohibited until and unless the Owner thereof first obtains the approval of the Planning Committee and otherwise complies with all of the provisions of this section. The Association may on thirty (30) days' written notice to the Owner thereof remove or cause to be removed or brought into conformity with these Restrictions, any improvement constructed, reconstructed, refinished, altered or maintained in violation of this section, or require and compel the Owner thereof to do so, and the Owner thereof shall reimburse the Association for all expenses incurred in connection therewith.

(b) Any Owner or Project Committee proposing to construct or reconstruct

Improvements or structures, or to recolor, refinish or alter any part of the exterior of any improvement or to perform any work which requires the prior approval of the Planning Committee, shall apply to the Planning Committee for approval. The Owner or Project Committee shall make application by submitting to the Planning Committee for approval in duplicate such plans and specifications for the proposed work as the Planning Committee may from time to time request, including, when deemed appropriate by the Planning Committee, the following: (i) floor plans; (ii) colors and samples of exterior materials and colors, with samples if required by the Planning Committee; (iii) specifications; (iv) building plan or plans; (v) wall sections; (vi) exterior elevations; (vii) roof plan; (viii) landscaping plans; (ix) graphics and exterior furnishings; (x) the Owner's proposed construction schedule, and (xi) drainage reports.

The Planning Committee may require that the submission of plans and specifications be accompanied by a plans inspection fee in an amount set by the Committee from time to time to defray the actual cost of the examination of plans and construction.

(c) The Planning Committee shall approve the plans, drawings and specifications submitted to it only if the following conditions shall have been satisfied:

(1) The Owner has submitted the materials required by the Planning Committee;

(2) The Planning Committee finds that the proposed improvement conforms to these Restrictions. All such approvals shall be in writing and may be conditioned upon the submission by the Owner, and the resolutions of the Planning Committee, of such additional plans and specifications as the Planning Committee shall deem appropriate for the purpose of insuring that the construction of the proposed improvement shall be in accordance with the approved plans. Applications made in accordance with this section which have been neither approved, rejected, or additional information requested within thirty (30) days from the date of submission thereof to the Planning Committee shall be deemed approved. One set of plans as finally approved and bearing the endorsement of the Planning Committee shall be returned to the Owner for his permanent records.

(d) Upon receipt of the approval from the Planning Committee, the Owner or

Project Committee shall, as soon as practicable, satisfy all conditions of that approval and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing and alterations pursuant to the approved plans within one (1) year from the date of such approval or within such longer time as the Planning Committee may grant on the application of such Owner or Project Committee. If the Owner or Project Committee shall fail to comply with this paragraph, any approval given shall be deemed revoked and the improvement may be treated as having been constructed in violation of this section unless upon the written request of the Owner made to the Planning Committee prior to the expiration of said one (1) year or longer period granted by the Planning Committee and upon a finding by the Planning Committee that there has been a good faith start of construction by Owner or that there has been no change in circumstances, the time for such commencement is extended in writing by the Planning Committee. Such extension shall be given as a matter of course when delays in completion of construction are caused by strikes, unavailability of materials, fire, storms, acts of God or similar events not within the control of the particular Owner or Project Committee.

(e) Upon the completion of any construction or reconstruction of, or the alteration or refinishing of the exterior of, any improvement, or upon the completion of any other work for which approved plans are required under this section, Owner shall give notice thereof to the Planning Committee, and within thirty (30) days thereafter the Planning Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with approved plans. If the Planning Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with approved plans, it shall notify the Owner of such non-compliance within sixty (60) days from the notice of completion and shall require the Owner to remedy such non-compliance. If upon the expiration of sixty (60) days from the date of such notification by the Planning Committee the Owner shall have failed to

remedy such non-compliance, the Planning Committee shall notify the Association of such failure, and the Association, at its option, may either remove the improvement or remedy the non-compliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith.

(f) If for any reason the Planning Committee fails to notify the Owner of any such non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the improvement shall be deemed to have been completed in accordance with the approved plans.

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

Section 3.07. Common Area and Neighborhood Common Area: Construction and Alteration of Improvements.

Except to the extent otherwise permitted pursuant to easements, licenses and rights of use, no improvement, or other work which in any way alters common area or neighborhood common area from its existing state on the date it was conveyed by Grantor to the Association or neighborhood association, or otherwise acquired shall be made or done except upon compliance with the provisions of this section. As this section relates to neighborhood common area the term "common area" shall also include "neighborhood common area" and the term "Association" shall also include neighborhood association.

(a) Subject to Grantor's reserved rights pursuant to the Article entitled "Rights of Grantor", no person other than Grantor or the Association, with the permission of Grantor during the first three (3) years following conveyance of common area by Grantor to the Association, shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing

drainage of, or shall destroy or remove any tree, shrub, or other vegetation upon common area, except as necessary for proper maintenance and replacement of such trees, plants and vegetation.

(b) If the Association or Grantor proposes to construct, reconstruct or alter the exterior of, any improvement located or to be located upon common area, or do any act that could result in any change in the topography thereof, the Association shall first obtain the Planning Committee's approval pursuant to the procedures, requirements and provisions as provided for improvement of lots and project areas. The Planning Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if it finds that such improvement (i) is reasonably necessary for any utility installation serving any property within the subdivision, (ii) is desirable in order to provide or improve access to or to enhance the use and enjoyment of common area, (iii) is desirable to protect, support or preserve any property within the subdivision, or (iv) is desirable for the construction of a recreational facility, and (v) is necessary or desirable because of a change of use of the property within the subdivision.

ARTICLE 4

Planning Committee

Section 4.01. Planning Committee: Organization; Power of Appointment and

Removal of Members. There shall be a Planning Committee called The Tanoan Community Association Planning and Architectural Committee, organized as follows:

(a) The Planning Committee shall consist of five (5) members. Each of such persons shall hold his office until such time as he has resigned or he has been removed or his successor has been appointed, as set forth herein.

(b) Except as provided in paragraph (c) below, the right from time to time to appoint and remove all members of the Planning Committee shall be, and hereby is, reserved to and vested solely in Grantor.

(c) The right from time to time to appoint and remove members of the Planning Committee shall be reserved to and vested in the Association (i) if Grantor fails to exercise its rights hereunder or records a declaration waiving such rights, or (ii) from and after any time at which persons other than Grantor own ninety percent (90%) or more of the lots then within the Residential Area, unless Grantor's percentage ownership is increased to ten percent (10%) or more of the lots within the Residential Area by reason of the annexation of property to the subdivision. For the purpose of this section only, Grantor's percentage of ownership shall be computed by including as lots owned by Grantor all lots owned by a joint venture in which Grantor or a declarant is a joint venturer, and all lots owned by a partnership in which Grantor or a declarant is a general partner. If a lot in the Residential Area is designated on the Grantor's master plan for the subdivision as a site for a project, for the purposes of this section only, Grantor's percentage of ownership shall be computed so as to include as lots owned by Grantor the number of project units designated on the Master Plan to be built on such lot.

(d) Any member of the Planning Committee may at any time resign from the Planning Committee upon written notice delivered to Grantor or to the Association, whichever then has the right to appoint and remove members.

Section 4.02. Planning Committee: Duties. It shall be the duty of the Planning Committee to consider and act upon such proposals or plans from time to time submitted to it pursuant to these Restrictions, to adopt Planning Committee rules, and to perform such other duties from time to time delegated to it by or pursuant to these Restrictions.

Section 4.03. Planning Committee: Meetings; Action; Compensation and Expenses. The Planning Committee shall meet from time to time as necessary to perform its duties properly hereunder. The vote or written consent of any three (3) members shall constitute an act by the Planning Committee unless the unanimous decision of its members is

otherwise required. The Planning Committee shall keep and maintain a record of all action from time to time taken by the Planning Committee at such meetings or otherwise. Unless authorized by the Grantor during the period Grantor retains the power to appoint or the Association thereafter the members of the Planning Committee shall not receive any compensation from the Association for services rendered.

Section 4.04. Planning Committee Rules. The Planning Committee shall have the exclusive power to adopt, amend and repeal, from time to time and by unanimous vote, rules and regulations, to be known as "Planning Committee Rules", which interpret or implement the provisions of Article III and which shall include any regulations made pursuant to the authority granted to The Tanoan Community Association. A copy of the Planning Committee rules, as they may from time to time be adopted, amended or repealed, certified by any member of the Planning Committee, shall be maintained with the corporate records of the Association and shall be available for inspection by members.

Section 4.05. Non-Waiver. The approval by the Planning Committee of any plans, drawings or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Planning Committee under these Restrictions, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

Section 4.06. Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the Planning Committee or its designated agent by any Owner, and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Association, the Planning Committee shall provide Owner with an estoppel certificate executed and acknowledged by any one of its members, certifying with respect to any lot of said Owner, that as of the date thereof either (a) all improvements and other work made or done upon or within said lot by the Owner, or otherwise, comply with these Restrictions, or (b)

such improvements and work do not so comply, in which event the certificate shall also (i) identify the non-complying improvements and work and (ii) set forth with particularity the cause or causes for such non-compliance.

ARTICLE 5

Provisions Relating to Zero Lot Line Houses

Section 5.01. Application. If any single family dwellings not part of a project are constructed on lots in the Residential Area in such a manner that parts of two (2) or more of such dwellings each on its own lot share a common wall or roof or other common parts, or if a structural part of the dwelling is on or abuts the lot line, the lots containing such dwellings and any lot sharing the lot line on which the structural part of any such dwelling is on or abuts shall be subject to the provisions of this Article.

Section 5.02. Obligation of Owners. Where such dwellings share common parts, it is the obligation of each such Owner to keep his structure in good condition and repair and to repair or replace any damage to the common elements of both dwellings caused by his negligence or willful act. Each Owner shall cooperate in the repair and replacement of common elements not caused by the negligence or willful acts of one of the Owners and shall pay one-half (1/2) the cost of such repairs or replacement.

Section 5.03. Easement for Repair and Maintenance. Each such Owner has an easement to enter onto the adjoining property of the other at reasonable times for the purpose of construction maintenance, repair and reconstruction of his dwelling and utilities provided that the property of the other Owner is returned to the condition in which it was found and that there is no undue delay in the completion of the work.

Section 5.04. Easement for Roof Overlap. Each owner has an easement to maintain any roof and eave overhang over the adjoining property not exceeding three (3) feet and for drainage and run off from such roof.

Section 5.05. Design and Color. Where such dwellings share common parts, no Owner shall change the design of his dwelling as it affects the common elements or the exterior colors of his dwelling without the consent of the other Owner. The color of any such units shall at all times be uniform unless otherwise approved by the Planning Committee.

Section 5.06. Planning Committee as Arbitrator. If a dispute arises between any such Owners as to the need for any repairs or renovation of the common elements, the color or design of the dwellings or the liability for the cost of any such repairs or renovation, or entry onto adjoining property any such Owner may submit the matter to the Planning Committee, who after a hearing with at least fifteen (15) days written notice to all parties can render a decision on such disputes binding on all such Owners.

ARTICLE 6

Streets, Easements, Reservations and Rights of Way

Section 6.01. Nature of Reservations. Easements, reservations and rights of way shall be reserved on and across Common Areas for the erection, construction and maintenance of:

- (a) Wires and conduits for the transmission of electricity, power lighting, telephone, television and other purposes, pipes and mains for water, gas and heating, and for other utilities and services as their necessary and proper attachments.
- (b) Public and private sewers, storm drains and land drains.
- (c) Golf cart driveways and pedestrian paths.
- (d) Waterways, parkways and berms.
- (e) Any other method of conducting or performing any public or quasi-public utility function or use on or beneath the surface of the ground.
- (f) Ingress and egress to and from any lot for development and/or construction purposes.

Section 6.02. How Reservations are Made. Such easements, reservations and rights of way are as designated on the subdivision map, and additional easements, reservations and rights of way may be reserved by the Grantor, in any conveyance and as granted by the Association.

Section 6.03. Consent of Planning Committee. No house, building or other structure of any kind shall be built, erected or maintained upon any such easement, reservation or right of way without the express consent of the Planning Committee, and such easements, reservations and right of way shall, at all times, be open and accessible to public and quasi-public utilities, and to Grantor, all of whom shall have the right of ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under and upon said locations for the carrying out of any of the purposes for which said easements, reservations and rights of way are hereby reserved, or may hereafter be reserved.

Section 6.04. Extinguishing Such Reservations. The Association, or Grantor with the consent of the Association, shall have the right at any time to extinguish such easements, excepting ingress and egress easements which shall be deemed appurtenant to the lots and cannot be vacated or changed so to materially interfere with access to and from the lot by Owners of the lot(s), and rights of way, provided that the consent of the holder or owner of any such easement or right of way has been obtained.

Section 6.05. Clearing Reserved Area. Grantor, or the Association, or a user of the easement with the permission of Grantor or the Association, shall have the right at any time to cut and remove any trees or branches from such easements, reservations and rights of way as may be reasonably necessary for their use.

ARTICLE 7

The Tanoan Community Owner's Association

Section 7.01. Organization.

(a) The Association shall be organized as a non-profit membership corporation charged with the duties and empowered with the rights herein set forth; its affairs shall be governed by these Restrictions and to the extent not inconsistent herewith its Articles of Incorporation and By-Laws.

(b) In the event that the Association as a corporate entity is not formed or after formation loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice be formed and succeed to all the rights and obligations of the Association hereunder until a qualified non-profit corporation is formed. Said unincorporated association shall be known as The Tanoan Community Owners Association and its affairs shall be governed by these Restrictions and, to the extent not inconsistent therewith, by said Articles of Incorporation and By-Laws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

(c) The governing body of the Association shall be elected at an annual or special meeting not later than six (6) months from the sale by Grantor of the first lot subject to these Restrictions.

Section 7.02. Membership.

(a) Each Owner by virtue of being an Owner (except for the Association) and for so long as he is an Owner, shall be a member of the Association, or a member of the preceding or succeeding unincorporated association taking its place, except that an Owner shall not be a member by virtue of owning common areas, neighborhood common areas, project common areas, property owned by government or public bodies or dedicated to public use, or exempted from assessment.

(b) The rights, duties, privileges and obligations of an Owner as a member of the Association or its preceding or succeeding unincorporated association shall be those set forth in, and shall be exercised and imposed in accordance with, the provisions of these Restrictions and the Association's Articles and By-Laws.

(c) In the event of the failure to incorporate the Association on the dissolution of the Association and the formation of an unincorporated association, each member of the unincorporated association shall have an equal, underlying beneficial interest in all of the Association's property transferred to or for the account or benefit of said unincorporated association in direct proportion to the number of votes allocated to the lots owned by such member; provided, however, that there shall be no judicial partition of such property, or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek any such judicial partition.

Section 7.03. Classes of Membership. The Association shall have two (2) Classes of Membership, Class I and Class II.

(a) **Class I.** All members shall be Class I members except Grantor and shall be entitled to votes as follows:

- (1) Ownership of a lot zoned or designated for a single family through fourplex dwelling or commercial use, whether unimproved, or improved - one (1) vote.
- (2) Ownership of a single lot actually occupied by a duplex, triplex or fourplex - one (1) vote for each separate dwelling unit.
- (3) Ownership of a lot zoned or designated as a project, but not yet not yet improved, or resubdivided as a project (whether such resubdivisions or divisions are accompanied by a subdivision map or by a recorded declaration) - one (1) vote.
- (4) Ownership of a residential project unit whether or not improved, but subdivided either by a map or by a recorded declaration - one (1) vote.

When more than one person holds an interest in any lot or unit, all such persons shall be members. The vote for such unit shall be exercised as such owners determine, and in no event shall such multiple Owners vote more votes than they are entitled by the lots or units owned.

(b) **Class II.** The Grantor shall be the only Class II member and shall be entitled to one vote for each lot or unit owned by Grantor prior to the initial conveyance of such lot

or unit by Grantor (the assignment or conveyance of all of Grantor's interest in the project shall not be such an initial conveyance). The Class II membership of Grantor shall terminate upon the sale of the last lot owned by it which has been or is subject to annexation into The Tanoan Community.

Section 7.04. Membership Voting Rights. Each member shall be entitled to the votes for each lot or unit owned by such Owner as set out in Section 7.03 on all matters properly submitted for vote to the membership of the Association. The right to vote may not be severed or separated from any lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any lot to a new Owner shall operate to transfer the appurtenant vote without the requirement of any express reference thereto. Voting may not be done by project committees for Project Owners but voting may be by written proxy. No project unit shall be treated as a separate lot for voting purposes until it has first been subdivided by a final subdivision map, and Declaration of Condominium or Master Covenants creating a Planned Unit Development have been recorded.

Any provision of these Restrictions requiring a vote by Owners shall be satisfied if the required number of Owners give their written consent. In any election held pursuant to the requirements of these Restrictions, ballots may be transmitted to Owners in the manner provided for the giving of notice by these Restrictions. If at any time the members other than Grantor do not have a sufficient percentage of voting power to elect at least one (1) director to the Board through the cumulation of all of their votes, Grantor at the annual election of the Board or at any other election of the entire Board shall be allowed to vote for no more than one (1) less than the total number of directors positions on the Board.

Section 7.05. Rights of Members to Use Common Areas. Members or members of their families who actually reside with them within the subdivision have a right to use the common areas on a non-exclusive basis subject to the Association Rules.

Section 7.06. Duties and Obligations of the Association. The Association shall

have the obligation and duties, subject to these Restrictions, to do and perform each and every of the following for the benefit of the Owners and for the maintenance and improvement of the subdivision.

(a) The Association shall accept as part of the subdivision all property annexed to the subdivision and shall accept all Owners as members of the Association.

(b) The Association shall accept from Grantor the fee or leasehold estate in all common area from time to time transferred to it, subject to the reservation of all easements, licenses and rights to use, and the rights of Grantor.

(c) Immediately prior to any dissolution or incapacity of the Association as a corporate entity the Association shall transfer its estate in common area to an independent corporate trustee to hold common area in trust for the benefit of the unincorporated association formed pursuant to this Article and for the benefit of the Owners. If for any reason this is not done, it shall immediately be done by the succeeding unincorporated association and such conveyance may be compelled by any Owner.

(d) The Association shall maintain, or provide for the maintenance of, common area and all improvements thereon including, without limitation, recreational facilities, in good order and repair, provided, that the Association shall have no maintenance responsibility with respect to improvements installed by other than the Association or Grantor, pursuant to easements, licenses and rights of use, which the Association shall maintain.

(e) The Association may enter upon and maintain, or provide for the maintenance of any lot, neighborhood common area (including Golf Course Lots) or project area which is not maintained by the Owner, Neighborhood Association or Project Committee thereof in accordance with the requirements of these Restrictions, at the expense of any such Owner, Neighborhood Association or Project Committee upon thirty (30) days written notice to such Owner.

(f) To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon common area.

(g) The Association shall obtain and maintain in force such policies of insurance as shall be deemed necessary or desirable by the Board of Directors.

Each policy of fire and extended coverage insurance and all other policies of insurance obtained by the Association whether or not required to be obtained pursuant to the provisions of these Restrictions, shall expressly waive any and all rights of subrogation against Grantor, its representatives and employees, the Association and any Owner. The policy or policies referred to above shall name the Grantor, Association, their representatives, members and employees, and the Owners as insured, and such policy or policies shall protect each of the insureds, as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurer or insurers thereof to pay any amount in excess of the maximum limits stated therein. Each year the Association shall review the policy or policies carried pursuant to this paragraph, and shall take such action as may be necessary to assure that the amount of insurance adequately covers the risks of loss against which such policy or policies insure.

(h) The Association shall from time to time make, establish, promulgate, amend and repeal the Subdivision Rules.

(i) The Association shall take such action, whether or not expressly authorized by these Restrictions, as may reasonably be necessary to enforce or carry out the restrictions, limitations, covenants and conditions of these Restrictions and the Subdivision Rules.

Section 7.07. Powers and Authority of the Association. The Association shall have all of the powers set forth in its Articles of Incorporation, together with its general powers as a non-profit corporation, subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles of Incorporation, its By-Laws and in these Restrictions, to do any and all lawful things which may be authorized, required or permitted to be done by

the Association under and by virtue of these Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and general welfare of Owners and members. Without in any way limiting the generality of the foregoing:

(a) In fulfilling any of its obligations or duties under these Restrictions, including, without limitations, operation or administration of common area, the Association shall have the power and authority:

(1) To contract and pay for, or otherwise provide for, the maintenance, restoration and repair of the common area and all improvements of whatever kind and for whatever purpose from time to time located upon common area and procure all necessary utility and other services therefor;

(2) To obtain, maintain and pay for such insurance policies or bonds as the Association shall deem to be appropriate for the protection or benefit of this subdivision, the Association, the members of the Board or Owners;

(3) To incur indebtedness; but any indebtedness and the terms thereof which would require for payment or amortization thereof, an increase in dues over the level for the previous year plus allowed increases, such indebtedness must be approved by the Class I members by the same procedure for increasing dues and have the written approval of the Class II member.

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

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

(6) To pay and to discharge any and all liens from time to time placed or imposed upon any common area, on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration; and

(7) To purchase, lease or contract for the use of land and improvements for recreational or other purposes to the extent the Association deems necessary. However, the purpose or construction of any capital asset or improvement must have the approval of the Class I members and the written consent of the

Class II member if the item is not an approved budget item or if it is not an item for which there has been established and funded a sinking fund for the item purchased or constructed.

(8) To contract and pay for security service.

(b) With respect to its estate in common area, the Association shall have the power and authority from time to time to grant and convey easements or rights of way, in, on, over or under any common area, for the purpose of constructing, erecting, operating and maintaining utility lines and facilities and other lines or facilities for the benefit of the subdivision or Owners.

(c) The Association may employ the services of a professional manager or managers to manage the affairs of the Association and any part of its common area, and, to the extent not inconsistent with the laws of the State of New Mexico and upon such conditions as are otherwise deemed advisable by the Association, the Association may delegate to the manager any of its powers under these Restrictions. Any contract with such a professional manager shall be considered a service contract and subject to the provisions of these Restrictions relating to such contracts.

(d) The Association shall have the right from time to time to pay, compromise or contest any and all taxes and assessments levied against all or any part of common area or upon any personal property belonging to the Association.

(e) The Association shall have the power and authority from time to time, in its own name, and on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Restrictions and to enforce, by mandatory injunction or otherwise, all of the provisions of these Restrictions and shall not be required to post bond to support such actions.

(f) The Association may bill with its own assessments the regular assessments of

Neighborhood Associations charging such associations for the actual cost of such services and may administer the affairs of such Associations, including maintenance of common areas, assessments, collection of delinquent assessments and enforcement of restrictions, keeping of membership books, purchase of insurance, payment of taxes, administration of corporate affairs and to enter into service or other contracts for such services, and subject to the power of the governing board of any such association to set assessments, set cost limits on service and other contracts, set limits of insurance coverage and exercise other powers granted to such governing board by these Restrictions. The Association while administering the affairs of such associations may enforce the obligations of such associations by suit or otherwise in the name of any such association or in the associations name.

Section 7.08. Subdivision Rules.

(a) The Association may, from time to time, and subject to the provisions of these Restrictions, adopt, amend and repeal rules and regulations, to be known as the "Subdivision Rules" governing:

(1) The use of common area and recreational facilities; provided members and the purchaser or tenant of any lot or unit who is granted a member's use in place and stead of such member shall be treated on a non-discriminatory basis and shall not be deprived of use except for suspension of their rights set out in (2) below, subject to regulations as to time and method of use, including allocations of time for specific groups using such facilities for classes or competition, reasonable restrictions, based on age, and rules necessary or convenient for safety.

(2) The suspension of the voting rights and the use of common area and facilities of a member, and all persons using such members privileges by the Board for violation of the project restrictions, the Association's Articles and By-Laws, or the subdivision rules, such suspension to be limited to a period of ninety (90) days after curing any violation; and similar suspension of voting rights and use for the failure to pay assessments extending for the entire period of non-payment. An opportunity for hearing will be given any member whose privileges are so suspended prior to the effective date of the suspension in accordance with the Association By-Laws. The Association shall not have the power or right to deny members access to their lots over the community streets.

(3) Penalties, including monetary fines and assessments, and other enforcement rights of the Association for breach of the Subdivision Rules or Planning Committee Rules.

(b) The Subdivision Rules may without limitation and to the extent deemed necessary by the Association regulate the use of the common areas subject to the rights of members set forth in Paragraph (a) (l) above, and Grantor's rights, which shall not be limited, and which rules may entirely exclude use of such areas to invitees of members and others not having rights to use on a nondiscriminatory basis.

(c) A copy of the Subdivision Rules, as they may from time to time be adopted, amended or repealed, shall be mailed to each member and posted but the failure to properly mail and post shall not invalidate the Subdivision Rules or prevent their enforcement. The Subdivision Rules shall have the same force and effect as if they were set forth in and were a part of these Restrictions.

Section 7.09. Liability of Members of Board. No member of the Board shall be personally liable to any Owner, Neighborhood Association, Project Committee, or to any other person, including Grantor, for any error or omission of the Association, its representatives and employees, the Planning Committee, or the manager; provided, however, that such member has, with the actual knowledge possessed by him, acted in good faith.

ARTICLE 8

Funds, Assessments and Delinquency

Section 8.01. Creation of Lien and Personal Obligation for Assessments.

Grantor for each lot and project unit owned by it hereby agrees to pay, and each owner of any lot or project unit within the Tanoan Community as may from time to time be added to by annexation by the acceptance of a deed or contract of sale therefor, whether or not so expressed in any such deed or contract or other conveyance is deemed to agree to pay the Association: (1) maintenance assessments; (2) special assessments; (3) assessments for capital improvements; (4) all other fees or other moneys due to the Association from such

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

Section 8.02. Maintenance Assessment.

(a) Within thirty (30) days prior to the commencement of each calendar year, the first day of which shall be the assessment date, the Association shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its functions under Article 8 (including a reasonable provision for contingencies and replacements), except those functions which relate to the purchase or development of capital improvements which must be approved by the members and shall subtract from such estimate an amount equal to other projected revenues and surplus balances not needed for reserves and contingencies. The sum or net estimate so determined shall be assessed to all Owners not exempt in shares proportionate to their voting rights as a maintenance assessment.

(b) If at any time and from time to time during any fiscal year the maintenance assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Association may levy a further assessment in the amount of such actual or estimated inadequacy, which shall be assessed to Owners divided as provided in this Section.

The maintenance assessment shall not be increased by more than the increase reflected by the Consumer Price Index, all items, as published by the Bureau of Labor Statistics of the Department of Labor, or other comparable index in the event the Consumer Price Index ceases to be published, without the approval of the Class I members, and the

consent of the Class II member, but the percentage increase shall be cumulative and any amount not used in one year may be used in later years. For purposes of implementing this paragraph, January 1, 1979, shall be the base index rate for determining any increases.

Section 8.03. Assessments for Capital Improvements and Indebtedness.

The Association may also levy in any fiscal year an assessment for paying or returning in whole or in part the cost of acquisition, construction, reconstruction, repair or replacement of a described capital improvement to the common area (whether the improvement constitutes real or personal property) or retiring an indebtedness of the Association in an amount in excess of \$10,000.00 in any year, provided the consent of the members has been obtained as provided in Section 7.07, which shall be assessed to Owners as provided for in maintenance assessments.

Section 8.04. Uniform Rates and Due Dates. Maintenance assessments and

assessments for capital improvements and indebtedness shall be fixed at a uniform rate based on voting rights.

Section 8.05. Special Assessment. The Association shall levy a special

assessment against any Owner as a result of whose acts, or the acts of his tenant, family or invitees, or failure or refusal to act in violation of these Restrictions, or the Subdivision Rules, moneys were expended from the operating fund by the Association in performing its functions. Such assessment shall be in the amount so expended, and shall be due and payable to the Association when levied and notice given. A special assessment may also be levied against any such Owner to collect any fee or charge charged pursuant to the authority of these Restrictions, due to the Association from such Owner or Owners and not paid within thirty (30) days.

Section 8.06. Penalty Assessments. Penalty assessments may be imposed for

violation of the Subdivision Rules, pursuant to the procedures established from time to time by the Board of Directors. Such assessments shall be those punitive in nature and may be

imposed without regard to whether or not monies have been expended by the Association as a result of such violation. Notice of the intent of the Board of Directors to impose such assessments, provisions for hearing and appeal shall be established by resolution of the Board of Directors.

Section 8.07. Notice of Assessment. The Association shall give each Owner assessed thirty (30) days written notice of such assessments, the date of the assessment, the due date or dates giving the amount of such assessment and if applicable, an itemization of the various assessments being made.

Section 8.08. Commercial Assessments. Commercial areas shall be assessed at such rates as may be determined by the Board of Directors with the approval of the Class II member. Provided, however, after establishing the initial assessment therefor, commercial assessments may be increased only in accordance with increases made for other assessments.

Section 8.09. Date of Commencement of Regular Assessments. The regular assessments provided for in this Article shall commence as to lots on the first day of the 12th month following the recording of these Restrictions and as to later annexed lots on the first day of the 12th month following the recording of the declaration annexing such lots.

Section 8.10. Certificate of Payment. The Association shall, upon demand, furnish to any owner liable for assessments, a certificate in writing signed by an officer or managing agent of the Association, setting forth whether the regular and special assessments on a specified lot have been paid, and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8.11. Exempt Property. The following property subject to these Restrictions shall be exempt from the maintenance and capital improvement and

indebtedness assessments; (a) common area, (b) neighborhood common areas, (c) project common areas, and (d) units owned by a mortgagee which are acquired by foreclosure or by deed in lieu of foreclosure for so long as it remains the property of such mortgagee and remains unoccupied, as more specifically defined in Article 10 hereof.

Section 8.12. Delinquency. Any assessment provided for in this Article, which is not paid when due, shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$10.00 or ten percent (10%) of the amount due assessment whichever is greater regardless of the number of individual assessments due. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then maximum lawful rate permitted for secured indebtednesses under the laws of the State of New Mexico, and the Association may, at its option, bring an action at law against the owner or owners personally obligated to pay the same, or upon compliance with the notice provisions set forth in Section 8.12, to foreclose the lien provided for in Section 8.01 and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest at the rate provided herein and a reasonable attorney's fee, together with the costs of action. Each owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such owner or other owners for the collection of such delinquent assessments.

Section 8.11. Notice of Lien. No action shall be brought to foreclose an assessment lien, (however, no notice shall be required to perfect the lien for the assessment) as herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the owner of said lot, at the address of owner as registered in the Association office. Said notice of claim

must recite a good and sufficient legal description of any such lot, the record owner or reputed owner thereof, the amount claimed (which shall include the interest charges and late charges), and the name and address of the Association.

Section 8.12. Foreclosure Sale. Any sale after foreclosure shall be conducted in accordance with the laws governing foreclosure sales in the State of New Mexico. The Association, through its attorneys and duly authorized agents, shall have the power to bid on the lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same and may bid the amount of the foreclosure decree in lieu of cash.

Section 8.13. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was sent by the Association, the Association shall, upon request, provide a certificate of payment as provided under section 8.08.

Section 8.14. Cumulative Remedies. The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for any other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

ARTICLE 9

Neighborhood Association

Section 9.01. Organization and Membership. The organization and membership of a Neighborhood Association shall be as set out for The Tanoan Community Owners' Association in Article 7 and for that purpose Sections 7.01 through 7.05 are incorporated herein with the following changes and modifications of terms.

(a) The terms "Association" and "The Tanoan Community Owners' Association" shall refer to the Neighborhood Association.

(b) The terms "Owner" or "Owners" shall refer to owners within the neighborhood as set out in the declaration establishing it.

(c) The term "Common Area" shall refer to the neighborhood common area.

(d) The term "Subdivision" shall refer to the neighborhood.

Section 9.02. Duties and Obligations. A neighborhood association shall have the obligation and duties subject to these Restrictions to perform as set out for The Tanoan Community Owners Association in Section 7.06, which is incorporated herein with the following changes and modifications:

(a) The changes and modifications of terms set out in Section 9.01 (a) through (d).

(b) The deletion of Paragraphs (e) and (i).

(c) The neighborhood association may with the same authority and on the same basis as the Association promulgate, amend and repeal Subdivision Rules governing the use of its neighborhood common areas.

Section 9.03. Powers and Authority. The powers and authority of a neighborhood association are as set out for The Tanoan Community Owners Association in Section 7.07 through 7.09 with the following changes and modifications:

(a) The changes and modifications in terms as set out in Sections 9.01 (a) through (d).

(b) The deletion of Section 7.07 (f).

Section 9.04. Funds, Assessments and Delinquency. Neighborhood associations shall have the funds, assessments and rights of enforcement set for The Tanoan Community Owners Association in Article 8 which is incorporated herein, with the changes and modifications in terms set out in Section 9.01(a) through (d).

ARTICLE 10

Protection of Security Interests

Section 10.01. Application of Assessments to Mortgagees. The liens created under these Restrictions upon any lot shall be subject and subordinate to, and shall not affect the rights of a first mortgagee (as a first mortgagee but shall be enforceable as a second

mortgage on the Unit) under any recorded first mortgage upon a lot made in good faith and for value. After foreclosure sale by a first mortgagee or the date the mortgagee obtains possession of the property, whichever is later, the unit so acquired shall become exempt from liability for payment of assessments and shall remain exempt for so long as the unit remains unoccupied. Occupancy of the unit by any person shall again make such unit and the Owner(s) thereof liable for payment of assessments, regardless of whether or not the unit is subsequently vacated, unless due to another foreclosure action.

Section 10.02. **No Amendment Affects Mortgagees.** No amendment to these Restrictions shall adversely affect the rights of any mortgagee who does not join in the execution thereof, as to mortgages recorded prior to the date such amendment is recorded.

Section 10.03. **Limitation of Enforcement Against Mortgagee.** No violation of these Restrictions or enforcement of these Restrictions shall defeat or render invalid the lien of any first mortgagee when such mortgage is made in good faith and for value against the property but these Restrictions shall be effective against any person whose title to property within the subdivision is acquired by foreclosure, voluntary conveyance or otherwise.

Section 10.04. **Application of Project Restrictions.** Except as provided in this Article or specifically provided elsewhere in the project restrictions, all mortgages and mortgagees are bound by the provisions of these Restrictions.

ARTICLE 11

Rights of Grantor

Section 11.01. **Development of the Subdivision.** Grantor is developing the subdivision as a development containing commercial areas, condominiums, planned unit developments, duplex, triplex and fourplex units, common areas and recreational areas as well as single family dwellings, pursuant to its Master Plan as it may be amended from time to time, and all Owners of property within the subdivision are hereby placed on notice of these plans and the right of Grantor to amend such plans at any time.

Each person accepting a grant of property subject to these Restrictions hereby consents to such development and covenants not to oppose such development, including improvements, signs, parking areas and lighting provided that such development is not in violation of law. This Section shall not be construed as limiting the use of property within the Subdivision by its Owners.

Section 11.02.

Limitation of Restrictions on Grantor.

Grantor is

undertaking the work of developing the subdivision. The completion of that work and the sale, rental and other disposition of the property within the subdivision is essential for its development. In order that the work may be completed and the property developed and fully occupied as rapidly as possible, nothing in these Restrictions shall be understood or construed to:

- (a) Prevent Grantor or its agents, employees and contractors from doing on the property within the subdivision or any lot or unit thereof, whatever is reasonably necessary or advisable in connection with the completion of its work;
- (b) Prevent Grantor or its agents, employees and contractors from erecting, constructing and maintaining on any part or parts of the Project, such facilities, structures and offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the property in parcels by sale, lease or otherwise, including without limitation sales offices, model homes or project units, general business offices for its staff and employees, contractors and subcontractors, storage and parking facilities for materials and equipment and fabrication and assembly shops; or
- (c) Prevent Grantor from conducting on any part of the properties its business of completing the work, and disposing of the property;
- (d) Prevent Grantor from maintaining such sign or signs in the subdivision as Grantor deems necessary for its advertisement, and the sale, lease or disposition of any lot or improvement;

(e) Prevent Grantor from making and constructing any improvements without the permission of the Planning Committee during the period Grantor has the power to appoint the members of the Planning Committee;

(f) Prevent Grantor from amending its Master Plan for the subdivision from time to time as it deems fit, from combining or splitting lots within the subdivision or from applying for a change of zoning or use, or for a use permit on any property within the subdivision.

Section 11.03. Use of Subdivision Name. Grantor may use the name The Tanoan Community and the name of the Association or of any neighborhood association in connection with other developments whether adjacent to the subdivision or not, provided such names have a distinctive number or other designation so that they are not identical with the names of The Tanoan Community, the Association and any neighborhood association. Consent is hereby given to Grantor and Grantor's assigns to use such names (distinguished as provided by this section) as the name of a Corporation and the New Mexico State Corporation Commission is authorized to permit the filing of Articles of Incorporation using such names. No other person without the written consent of Grantor shall use the name "Tanoan" either alone or in conjunction with any other as the name of any building, apartment, business or office except that the Association is in no way restricted from the use of its name in connection with its business and activities.

Section 11.04. Grantor's Use of Common Area. Grantor may reserve in any grant of common area to the Association or any neighborhood association and does hereby reserve the following rights:

(a) To use any building as a sales center and to maintain therein a sales office with normal and customary office and communication equipment and to maintain therein personnel, maps, display cases, models and decorations; to use the adjacent parking facilities for itself, its agents, employees and invitees; and to use such facilities for such social events as Grantor feels are necessary or proper to promote or aid the subdivision or Grantor.

(b) To use the facilities of the Association or of any neighborhood association transferred to the Association by Grantor for the purpose of promoting the sale of property within the Subdivision or of promoting Grantor; to allow the use of such facilities to its officers, employees, agents, contractors and guests.

(c) To enter onto the common area for any purpose for the development or promotion of the subdivision and Grantor. These rights reserved to Grantor shall terminate upon termination of the Class II class of membership.

Section 11.05. **No Amendment or Repeal.** The provision of this Article may not be amended or repealed without the consent of Grantor.

ARTICLE 12

Amendment, Repeal and Duration

Section 12.01. **Amendment and Repeal.** In addition to the rights reserved to Grantor to modify or supplement these Restrictions with respect to property annexed to the subdivision, and unless specifically provided to the contrary herein, these Restrictions, or any part thereof, as from time to time in effect with respect to all or any part of the subdivision, and any limitation, restriction, covenant or condition thereof, may be amended or repealed upon (i) the sixty percent (60%) vote or written consent of the Owners, and (ii) the recordation of a certificate of the Secretary or an Assistant Secretary of the Association setting forth in full the amendment or amendments to these Restrictions so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by a required sixty percent (60%) vote or consent, and if necessary by the consent of Grantor and the Owners of a particular class of property. The consent of the Owners of property within the Commercial Area must be obtained for any amendment imposing any use limitation, assessment or charge in excess of permitted increases upon such property.

Section 12.02. **Duration.** All of the limitations, restrictions, covenants and conditions of these Restrictions shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the subdivision, to the Owners of such property and to the Association, through December 31, 2025 A.D., subject, however, to the right to amend and terminate. Provided, however, that unless within one (1) year prior to December 31, 2025, there shall be recorded an instrument directing the termination of these Restrictions signed by a majority of the then Owners these Restrictions as they are in effect immediately prior to the expiration date shall be continued automatically, without any further notice, for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of any such period these Restrictions are terminated as set forth in this paragraph.

ARTICLE 13

Miscellaneous Provisions

Section 13.01. **Enforcement; Non-Waiver.**

(a) Except to the extent otherwise expressly provided herein, Grantor and the Association or any Owner shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by these Restrictions upon other Owners, or upon any property within the subdivision.

(b) Except to the extent otherwise expressly provided herein, Grantor and any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by these Restrictions upon the Association.

(c) Every act or omission whereby any restriction, condition or covenant of these Restrictions is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Grantor the Association or by an Owner or Owners, as provided for in

subsections (a) and (b) above; provided, only the Association or its duly authorized agents may enforce by self help any limitation, restriction, covenant, condition or obligation herein set forth.

(d) Each remedy provided for in these Restrictions is cumulative and not exclusive.

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

Section 13.02. Construction; Compliance With Laws; Severability; Singular and Plural; Titles.

(a) All of the limitations, restrictions, covenants and conditions of these Restrictions shall be liberally construed, together, to promote and effectuate the beneficial operation of the subdivision and the lots, project area, common area and neighborhood common area located therein.

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

(c) Notwithstanding the provisions of Subsection (a) above, the limitations, restrictions, covenants and conditions of these Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

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

(e) All titles used in these Restrictions, including those of articles and sections, are

intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such articles, sections nor any of the terms or provisions of these Restrictions.

Section 13.03. Lot Splitting; Consolidation.

(a) No lot shall be split unless the Planning Committee and the Association shall have given their written consent.

(b) No two or more lots within the Residential Area shall be consolidated into one lot or combined for the purpose of building one residence thereon whether or not the lots are consolidated, unless the Planning Committee and the Association shall have given their written consent.

(c) Nothing contained in Subsection (a) or (b) above shall apply to the splitting of any lot by Grantor or the consolidation of two or more lots into one lot by Grantor, or the resubdivision into a project of a lot designated for project use.

Section 13.04. Transfer of Common Area; Reservation of Easements and Rights of Way.

Grantor shall transfer and convey to the Association, or to a neighborhood association, and the Association or neighborhood association shall accept, the fee in all of the real property within the subdivision designated by Grantor as "Common Areas" and not constituting the common area of a project. Such real property may be subject to any or all of the following exceptions, liens and encumbrances:

(a) The lien of real property taxes and assessments not delinquent;

(b) Such easements and rights of way as may have been offered for dedication to the City of Albuquerque, or any other political subdivision or public organization, or public utility corporation;

(c) Such easements and rights of way, licenses or rights of use, on, over or under all

or any part of any such property or structures or improvements thereon as may be reserved to Grantor or granted to any Owner for the use thereof in accordance with the provisions of these Restrictions;

(d) Such easements and rights of way on, over or under all or any part thereof as may be reserved to Grantor for access to property contiguous to common area;

(e) The obligation imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of New Mexico, or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any such statute, law, ordinance or regulation; and

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

Section 13.05. Condemnation of Common Area. If at any time, or from time to time, all or any portion of common area, or neighborhood common area, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, any award in condemnation shall be paid to such Association and deposited into its operating fund. No Owner shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, such right of participation being herein reserved exclusively to the Association or neighborhood association which shall, in its name alone, represent the interests of all Owners.

Section 13.06. Destruction of Common Area. If common area is destroyed by fire or other casualty the Board shall have the improvements replaced or rebuilt if the Board

of Directors determines that such rebuilding is in the best interest of the Owners and sufficient funds are reasonably available for such rebuilding.

Section 13.07. Obligations of Owners; Avoidance; Termination.

(a) No owner, including Owners of property in the Commercial Area, through non-use of any common area or recreational facility, or by abandonment of his property, may avoid the burdens or obligations imposed on Owner by these Restrictions by virtue of being an Owner.

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

Section 13.08. Notices; Documents; Delivery. Any notice or other document permitted or required by these Restrictions to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows:

If to an Owner, then at any lot within the subdivision owned by the Owner or at such other address given by Owner to the Association, and; provided, however, that any such address may be changed from time to time by any such Owner, by the Planning Committee, or by Grantor by notice in writing, delivered to the Association, or by the Association, by notice in writing delivered to all Owners. If any mortgagee of an Owner files a written notice with the Association setting forth in detail the name or names of the Owner, mortgagees address for notice and proof of its secured position, the Association will mail copies of all notices to such

Owner to mortgagees; provided, however, the failure to do so shall not invalidate any such notice.

Section 13.09. Additional Covenants, Conditions and Restrictions. It is contemplated by this declaration that Grantor or purchasers of property within the subdivision may, if allowed by law further subdivide the property so purchased and may further encumber such property with additional declarations of covenants, conditions, restrictions, limitation and terms and conditions of record for such purposes in connection with such further subdivisions as may be allowed by law. Such additional declarations of covenants, conditions, restrictions, limitations and terms and conditions are expressly contemplated and allowed by these Restrictions provided no such additional declaration shall conflict with any provision of these Restrictions. If there is any conflict between any additional declaration and these Restrictions, these Restrictions shall control and the provisions of the additional declaration to the extent they conflict with these Restrictions shall be void and unenforceable.

IN WITNESS WHEREOF, the undersigned, being the Developer of the Tanoan Community and the Grantor herein, has caused its name to be signed

This page was intentionally omitted.

Signature page on file at association office.

VILLAGE GREENS

Perimeter of platting excluding previously described fairrough and portion of Academy Road.

17.838 ACRE PARCEL
WITHIN
THE ELENA GALLEGOS GRANT
BERNALILLO COUNTY
NEW MEXICO

BEING PORTIONS OF
PROJECTED SECTION 28
TOWNSHIP II NORTH, RANGE 4 EAST
N.M.P.M.

That certain parcel of land, situate within the County of Bernalillo, New Mexico and comprising a portion of the Elena Gallegos Grant; being a portion of projected Section 28, Township II North, Range 4 East, New Mexico Principal Meridian and being more particularly described by metes and bounds as follows:

Beginning at a point on the north right-of-way line of Academy Road, N.E., said point being the northwest corner of "Academy Hills subdivision, Unit 4, an addition to the City of Albuquerque, Bernalillo County, New Mexico, January 1978" as the same is shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico on January 16, 1978 as document 783325, folio D8-70; whence the City of Albuquerque permanent survey marker (brass cap) # 1-D-21 (having State Plat Coordinates $x=415,462.45$ and $y=1,513,473.51$) bears N 03° 07' 01" E, 2,196.99 feet; thence,

S 40° 53' 30" E, 53.00 feet to the centerline of Academy Road. N.E.; thence,

S 49° 06' 30" W, 398.12 feet along the centerline of Academy Road, N.E., to the southwest corner of the parcel herein described; thence,

N40° 53' 30" W, 58.00 feet to a point; thence,

N19° 06' 30" E, 40.00 feet to a point; thence,

N49° 06' 30" E, 40.00 feet to a point; thence,

N40° 53' 30" W, 166.79 feet to a point; thence,

N29° 40' 34" W, 70.05 feet to a Point on Curve; thence,

Southwesterly, 37.71 feet along the arc of a curve bearing to the right (said arc having a radius of 168.00 feet and long chord which bears S, 65° 49' 12" W, 37.63 feet) to a point; thence,

N17° 45' 00" W, 36.00 feet to a Point on Curve; thence,

Northeasterly 21 21 feet along the arc of a curve bearing to the left (said arc having a radius of 132.00 feet and a long chord which bears N 67° 38' 48" E, 21.19 feet) to a point; thence,

N 43° 40' 00" W, 79.94 feet to a point; thence,

N04 ° 26' 10" W, 45.43 feet to the northeast corner of the parcel herein described, a point on the previously described "fairrough" perimeter; thence along the previously described "fairrough" perimeter:

N65° 21'52" E, 13.59 feet to a point; thence,

N44° 54'26" E, 99.51 feet to a point; thence,

N21° 25' 31" W, 84.87 feet to a point; thence,

EXHIBIT "A" (page 1 of 4 pages)

N51° 06' 46" E, 551.14 feet to a point; thence,

N64° 56' 20" E, 783.79 feet to a point; thence,

S50° 30' 15" E, 111.32 feet to a point; thence,

N82° 44' 45" E, 43.23 feet to the northeast corner of the parcel herein described; thence leaving the "fairrough" perimeter,

S05° 23' 37" W, 123.16 feet to a point; thence,

S20° 04' 17" E, 38.97 feet to a Point of Curvature; thence,

Southeasterly, 101.78 feet along the arc of a curve bearing to the left (said arc having a radius of 229.00 feet and a long chord which bears S07° 20' 20" E, 100.94 feet) to a Point of Tangency; thence,

S 05° 23' 37" W, 163.08 feet to a point; thence,

S74° 30' 00" E, 44.14 feet to a point; thence,

S 00° 10' 12" W, 178.27 feet to the southeast corner of the parcel herein described, a point on the northerly right-of-way of Academy Road, N.E., thence along the northerly right-of-way of Academy Road, N.E.:

N 89° 49' 48" W, 227.20 feet to a Point of Curvature; thence,

Southwesterly, 610.38 feet along the arc of a curve bearing to the left (said arc having a radius of 851.70 feet and a long chord which bears S 69° 38' 21" W, 597.40 feet) to a Point of Tangency; thence,

S 49° 06' 30" W, 111.52 feet to the **PLACE OF BEGINNING** of the parcel herein described.

The aforescribed parcel contains 17.838 acres, more or less.

NOTE: All bearings recited herein are based on the New Mexico State Plane Coordinate System, Central Zone. All distances are expressed in local, ground measurement. Mean delta-alpha for the project's approximate centroid is -00° 09' 37" (Sector Development Plan Surveys). Retracement of this perimeter and comparison with adjacent subdivisions or surveys should consider the delta-alpha applicable to that specific portion.

I, Cliff A. Spirock, New Mexico Registered Land Surveyor No. 4972 hereby certify that the above description was prepared by me and is true and correct to the best of my knowledge and belief.

Cliff A. Spirock
N.M.L.S. #4972
COMMUNITY SCIENCES CORPORATION
Corrales, New Mexico
March 26, 1979

EXHIBIT "A" (page 2 of 4 pages)

FAIRWAY ESTATES

Perimeter of platting excluding
previously described fairrough.

54.455 ACRE PARCEL
WITHIN
THE ELENA GALLEGOS GRANT
BERNALILLO COUNTY
NEW MEXICO

BEING PORTIONS OF
PROJECTED SECTION 28
TOWNSHIP 11 NORTH, RANGE 4 EAST
N.M.P.M.

That certain parcel of land, situate within the County of Bernalillo, New Mexico and comprising a portion of the Elena Gallegos Grant; being a portion of projected Section 28, Township 11 North, Range 4 East, New Mexico Principal Meridian and being more particularly described by metes and bounds as follows:

Beginning at a point on the north right-of-way line of Academy Road, N.E., said point being the northwest corner of "Academy Hills subdivision, Unit 4, an addition to the City of Albuquerque, Bernalillo County, New Mexico, January 1978" as the same is shown and designated on the plat of said addition, filed in the office of the County Clerk of Bernalillo County, New Mexico on January 16, 1978 as document 783325, folio D8-70; whence the City of Albuquerque permanent survey marker (brass cap) #1-D-21 (having State Plat Coordinates x=415,462.45 and y= 1,513,473.51) bears N 03° 07' 01" E, 2,196.99 feet; thence,

N 84° 15' 17" W, 329.66 feet to a point; thence,

S 70° 16' 11" W, 503.56 feet to a point; thence,

N 68° 11' 55" W, 64.62 feet to a point; thence,

S 75° 49' 19" W, 97.99 feet to a point; thence,

S 66° 28' 36" W, 278.11 feet to a point; thence,

S 77° 59' 29" W, 418.15 feet to a point; thence,

S 54° 19' 25" W, 432.09 feet to a point; thence,

S 35° 27' 35" W, 341.30 feet to a point; thence,

S 10° 08' 27" W, 124.95 feet to a point; thence,

N 87° 49' 06" W, 420.31 feet to a point; thence,

S 74° 45' 53" W, 254.96 feet to a point; thence,

N 14° 41' 13" W, 619.23 feet to a point; thence,

N 10° 53' 08" W, 661.91 feet to a westernmost corner of the parcel herein described (from said point the North Quarter Corner of Section 29, T11N, R4E, N.M.P.M. and being a point on the centerline of Ventura Road, N.E., bears N50° 13' 35" W, 1,230.85 feet); thence,

S 69° 04' 32" E, 364.01 feet to a point; thence,

S 10° 00' 29" E, 86.31 feet to a point; thence,

EXHIBIT "A" (page 3 of 4 pages)

N 82° 33' 57" E, 942.93 feet to a point; thence,

N 67° 52' 41" E, 531.10 feet to a point; thence,

N 10° 39' 37" W, 145.94 feet to a point; thence,

N 37° 01' 49" E, 316.73 feet to a point (from said point the City of Albuquerque Monument "1-D21", having New Mexico State Plane Coordinates $y=1,513,473.51$ and $x=415,462.45$ and also being the Section Corner common to Sections 20, 21, 28 and 29, T11N, R4E, N.M.P.M. bears N 43° 03' 03" W, 365.71 feet); thence,

S 85° 50' 35" E, 776.29 feet to a point; thence,

N 55° 31' 26" E, 181.96 feet to a point; thence,

S 19° 33' 30" E, 806.54 feet to the easternmost corner and **PLACE OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.**

The aforementioned parcel contains 54.455 acres, more or less.

NOTE: All bearings recited herein are based on the New Mexico State Plane Coordinate System, Central Zone. All distances are expressed in local, ground measurement. Mean delta-alpha for the project's approximate centroid is '00° 09' 37" (Sector Development Plan Surveys). Retracement of this perimeter and comparison with adjacent subdivisions or surveys should consider the delta-alpha applicable to that specific portion.

I, Cliff A. Spirock, New Mexico Registered Land Surveyor No. 4972 hereby certify that the above description was prepared by me and is true and correct to the best of my knowledge and belief.

Cliff A. Spirock
N.M.L.S. #4972
COMMUNITY SCIENCES CORPORATION
Corrales, New Mexico
March 26, 1979

EXHIBIT "A" (page 4 of 4 pages)

EXHIBIT "B"

A certain tract or parcel of land, being situated within the Elena Gallegos Grant, and within the projected sections 29, 28, 27, 34, T 11 N, R 4 E, N.M.P.M., City of Albuquerque, County of Bernalillo, State of New Mexico, being more particularly described as follows:

Bounded on the North by San Antonio Road,

Bounded on the East by Tramway Boulevard,

Bounded on the South by Academy Road, and

Bounded on the West by Ventura Road.

