Copy

ALAMO MISSION CONDOMINIUMS ASSOCIATION

ENABLING DECLARATION ESTABLISHING A PLAN FOR BUILDING UNIT OWNERSHIP FOR ALAMO MISSION CONDOMINIUMS

AS AMENDED JANUARY 26, 1996

ENABLING DECLARATION ESTABLISHING A PLAN FOR BUILDING UNIT OWNERSHIP FOR ALAMO MISSION CONDOMINIUMS

The Declarant, Carlos Blanco and Emma C. Blanco, his wife, owners of a certain tract of land situated in Dona Ana County, New Mexico, more particularly described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, All in Block 21 of the College Subdivision in the City of Las Cruces, Dona Ana County, New Mexico, according to the official plat dated April, 1910, on file in the Office of the County Clerk of Dona Ana County in Book 4, Page 6 of the Plat Book Records,

do hereby declare and certify as follows:

RECITALS .

1. OWNERSHIP: Declarant is the owner of the real property located in Dona Ana County, New Mexico, described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, All in Block 21 of the College Subdivision in the City of Las Cruces, Dona Ana County, New Mexico, according to the official plat dated April, 1910, on file in the Office of the County Clerk of Dona Ana County in Book 4, Page 6 of the Plat Book Records.

- 2. IMPROVEMENTS: Declarant has improved the property by constructing on each lot or portions of each lot,
 - (a) Two Two-story buildings each containing five identical units, with the living room, dining room, kitchen and half-bath on the first floor and two bedrooms and one full bath on the second floor. The foundation and first floor are concrete and the exterior is frame with brick veneer. There are no basements.
 - (b) Four Single-story buildings each containing four identical units and each with four rooms, being two bedrooms, living room, kitchen with dining area, one full bath, one half-bath, and an atrium. The foundation and floor are concrete and the exterior is wood frame with brick veneer. There are no basements.

each of which has been constructed substantially in accordance with the plans and specifications styled Alamo Mission Condominiums, and attached hereto as Exhibit "A".

- 3. PROJECT: All of the real property, including all structures and other improvements thereon, is hereby defined and shall hereafter be referred to as the "Project Property".
- 4. INDIVIDUAL OWNERSHIP: Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the area or space contained in each of the units in each multi-family structure, and the co-ownership by the individual and separate owners thereof, as tenants in common and as hereinafter set forth, of all of the remaining real property which is hereinafter defined and referred to herein as the "Common Area".

DECLARATION

Declarant, the fee owner of the real property described in Recital No. 1 above, hereby makes the following declaration as to division, easements, rights, liens, charges, covenants, restrictions, limitations, conditions and uses to which the property may be put, hereby specifying that such declaration shall constitute covenants to run with the land and shall be binding upon Declarant, its successors and assigns, and all subsequent owners of all or any part of the project, together with the grantees, successors, heirs, executors, administrators, devisees or assigns:

- 1. PROJECT DIVISION: Declarant, in order to establish a plan of unit ownership for the Project, hereby covenants and agrees that it hereby divides the Project into the following separate freehold estates:
 - (a) Each of the units in each multi-family structure, each separately shown, numbered and designated in Exhibit "A" attached hereto, shall be a separate freehold estate consisting of the space bounded and contained within the intereior surface of the perimeter walls, floors, ceilings, windows and doors of each unit, each of such spaces being defined and referred to herein as a "unit". Each unit includes both the portions of the building so described and the airspace so encompassed, but the following are not part of any individual unit: bearing walls, columns, floors, roofs, foundations, reservoirs, tanks, pumps, and other central services, pipes, ducts, flues, shoots, conduits, wires or other utility installations, wherever located, except the outlets thereof when located within a unit. In interpreting deeds, declarations and plans, the existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries

rather than the metes and bounds (or other description) expressed in the deed, plan or declaration, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or in the deed and declaration and those of the building.

Notwithstanding the above language of this paragraph, the air-conditioning/heating units located in or on or attached to each unit shall be deemed personal property of the unit owner.

- (b) A freehold estate consisting of the re maining portion of the project is described and referred to herein as Common Area A and Common Area B. Common Area A shall include without limitation each multifamily structure (except for the unit itself), the solid earth upon which the structure is located and the airspace above the structure, all bearing walls, columns, floors, roofs, slabs, foundations, storage spaces, common halls, reservoirs, tanks, pumps and other central services, pipes, ducts, shoots, conduits, wires and other utility installations of the multi-family structures, wherever located, except the outlets thereof when located within the units themselves, parking spaces, lawns, pavement, trees, and all other landscaping on the particular parcel on which the multi-family structures are located and all of the remaining land of the project as so described in Exhibit A. Common Area B shall include play areas, paved alleys, driveways, parkways, activity buildings, and all other community facilities.
- (c) This Declaration may be amended by filing such additional plans as may be required to describe adequately the completion of improvements. Such completion may be shown by a certificate of an architect, engineer, or surveyor certifying that the improvements have been constructed substantially as herein represented, or designating any changes made. Such plans or certificate when signed and acknowledged by the Declarant shall in themselves constitute an amendment of this Declaration, notwithstanding the procedures for amendment described elsewhere in this Declaration.
- 2. UNIT: Each unit together with the respective undivided interest in the common areas specified and established in paragraph 5 hereof is defined and hereinafter referred to as a "unit", and the ownership of each unit shall include the unit and its respective undivided interests in the common areas.

- RESTRICTED COMMON AREAS: Portions of Common Area A are hereby set aside and allocated for the restricted use of the respective units as shown in Exhibit "A", and such areas shall be known as "restricted common areas". All portions not designated as Common Area A is hereby designated Common Area B and shall be known as "unrestricted common areas".
- DESCRIPTION: The 26 individual units hereby established and which shall be individually conveyed are described by street address as reflected on Exhibit "A" attached hereto and are as follows:
 - (a) 1401 Alamo Street -Units A, B, C, D, and E
 - (b) 1411 Alamo Street -Units A and B
 - (c) 1421 Alamo Street -Units A and B
 - (d) 1431 Alamo Street -Units A and B
 - (e) 1441 Alamo Street -Units A and B
 - (f)1451 Alamo Street -Units A and B
 - 1461 Alamo Street -(g) Units A and B
 - 1471 Alamo Street -(h) Units A and B
 - (i)
 - 1481 Alamo Street Units A and B 1491 Alamo Street Units A, B, C, D, and E (j)
- PERCENT OF COMMON OWNERSHIP: The value of the property and of each unit, and the percentage of undivided interest in the common areas and facilities appertaining to each unit and its owner for all purposes shall be established as follows:

For purposes of this Declaration, the total value of the project is declared to be \$574,800.00.

Units constructed on Project Property and described as 1401 Alamo Street - Units A, B, C, D, and E, and 1491 Alamo Street - Units A, B, C, D, and E are declared to have a value of \$21,000.00 each. The owners of such units are hereby allocated a 3.653% undivided interest each in the common areas and facilities.

Units constructed on Project Property and described as 1411 through 1481 Alamo Street - Units A and B, are declared to have a value of \$22,800.00 each. The owners of such units are hereby allocated a 3.967% undivided interest each in the common areas and facilities.

The proportionate shares of the separate owners of the respective units in the revenue and common expenses in the common areas shall be 1/26th per unit, and representation for voting purposes shall be one vote per unit for a member in good standing.

- 6. TRANSFER OF UNDIVIDED INTEREST: Each of the above respective undivided interests established and to be conveyed with the respective units cannot be changed, except in accordance with this Declaration, and Declarant, its successors and assigns, and grantees covenant and agree that the undivided interests in the common areas and the fee titles to the respective units conveyed therewith shall be deemed to be conveyed, and each undivided interest shall be deemed to be conveyed or encumbered with its respective unit even though the description of the instrument of conveyance or encumbrance may refer to the fee title to the unit or building number.
- 7. FLOOR PLANS: Attached hereto and made a part hereof as Exhibit "A" is a plat of the project, together with diagrammatic floor plans of each multi-family structure.
- 8. <u>COVENANTS OF UNIT OWNERS</u>: Declarant, its successors and assigns, by this declaration and all future owners of the units, by their acceptance of their respective deeds, covenant and agree as follows:
 - (a) The common areas shall remain undivided as set forth above; and no owner shall bring any action for partition, excepting as otherwise hereinafter provided, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project.
 - (b) The units shall be occupied and used by the respective owners only as a private dwelling for the owners, his family, tenants and social guests and for no other purpose.
 - (c) The unit owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own unit.
 - (d) If any portion of a common area A encroaches upon the units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of units agree that minor encroachments of parts of common area A due to construction shall be permitted and that valid easements for such encroachment and the maintenance thereof shall exist.

- (e) An owner of a unit shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.
- (f) The owners of all of the units covenant and agree that the administraction of the project shall be in accordance with the provisions of this Declaration and the By-Laws of the Association, which are attached hereto as Exhibit "B" and made a part hereof. In the event that any of the matters in this Declaration or in Exhibit "A" are in any way inconsistent with any matters in Exhibit "B", then any such matters in this Declaration shall prevail.
- (g) Each owner, tenant or occupant of a unit shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its duly authorized representative, all as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
- (h) This Declaration shall not be revoked or any of the provisions herein amended excepting as provided in Article 14.
- (i) No owner of a unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas or by the abandonment of his unit.
- (j) All sums assessed in accordance with the provisions of Exhibit "B" (By-Laws) shall constitute a lien on each respective unit prior and superior to all of the liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust), and when delinquent, may be enforced by the Association, its attorney or other person authorized by the Association according to the provisions of the laws of the State of New Mexico with regard to the foreclosure of liens

and/or mortgages, or in any other manner permitted by law. In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, and the Association or its nominee may bring an action therefor. The Association, acting on behalf of the unit owners, shall have the power to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

- (k) Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the same as a result of foreclosure or a conveyance in lieu of foreclosure of any such first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the units including such acquirer, his successors and assigns.
- (1) No unit owner shall allow to continue in his unit any state of disrepair or deterioration which would unreasonably interfere with any other unit owner's use and enjoyment of his unit. No unit owner shall allow his unit to become impregnated with noxious odors or infested with vermin. Should any unit owner default in his compliance with the provisions of this paragraph, the Association may declare that an emergency exists and enter in and upon the defaulting owner's premises to correct such default and the unit owner shall reimburse the Association for all expenditures incurred by the latter in correcting the default.
- (m) A unit owner shall reimburse the Association for all expenditures incurred by the latter in repairing or replacing any portion of the common areas and facilities damaged through his fault or the fault of members of his family or guests, or through his tenants fault or tenants guests fault. In the event that a unit owner shall become indebeted to the Association by reason of the provisions of this paragraph, the Association shall have a lien against his unit which may be enforced in the manner provided for in paragraph (j) above

- (n) In any conveyance of a unit, whether voluntary or involuntary, (except as a result of foreclosure; see paragraph 8(k) supra) the purchaser of same shall be jointly and severally liable with the seller for all unpaid assessments by the Association against the unit for its share of the common expenses up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser therefor. However, any such purchaser shall be entitled to a statement from the Association, setting forth the amount of the unpaid assessments against the unit due the Association and such purchaser shall not be liable for, nor should the unit be conveyed subject to a lien for, any unpaid assessments against the unit in excess of the amount set forth in the statement; provided, however, the purchaser shall be liable for any such assessment becoming due after the date of any such statement.
- (0) All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the By-Laws, shall be deemed to be binding on all owners of units, their successors and assigns.
- Entities supplying gas, electricity, telephone, water, sewer, television cable, and other similar services to the property are hereby granted and given rights of way over, across and through all of the Project Property, for the installation, maintenance, repair and replacement of any and all facilities necessary to the furnishing of these services. However, any specific entry, having once installed in, on, across, over or through any of the project area those facilities necessary to provide the project property or any part thereof the service or services furnished by it, shall be responsible for the reasonable restoration to the condition thereof immediately theretofore existing of those areas and/or improvements damaged or destroyed in the maintenance, repair or replacement of those facilities; provided, however, that trees, shrubs and other growing plants, where the continuing growth thereof interferes with the operation, maintenance, repair or replacement of any such facilities, may, from time to time, be trimmed back without the entities or facilities affected thereby assuming any liability for such actions. Likewise, a specific easement and right of way is granted in and to the entire area of the project as needed

31.1

by any governmental unit or any other entity or person which may need to come upon any property delineated by the project perimeter for preservation or maintenance of health, safety, and the prevention of destruction of structures. It being specifically intended that such right of way and easement shall be and is hereby granted for law enforcement officials, whether local, state or national, fire department officials, health officials and other similar officials, together with any vehicles normally used by such officials.

- The Association shall landscape, maintain and upkeep all common areas, whether Common Areas A or B, including utility easements, recreation building, recreation areas, driveways, etc., as reflected on the plat contained in Exhibit A attached hereto. The Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder, as follows: paint, repair replace and care for roofs, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens and screen doors, exterior door and window fixtures and other hardware. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such unit is subject.
- (r) Maintenance, upkeep and repairs of any screens and screen doors, exterior door and window fixtures, air-conditioning/heating units, and other hardware shall be the sole responsibility of the individual owner of the unit appurtenant thereto and not in any manner the responsibility of the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common area and all exteriors and roofs of the units, including but not limited to, recreation and parking areas and walks, shall be taken by the Association and any appropriate charge or cost thereof shall be levied against the proper unit(s) and subject to foreclosure as provided in paragraph (j) above.
- 9. <u>RESTRICTIONS ON USE</u>: The use of each and every unit is hereby restricted as follows:

- (a) Each unit shall be used only as a single-family dwelling to be occupied by its owner and his family and guests or by tenants or subtenants of the owner and the guests of such tenants or subtenants. All such use shall be subject to the provisions of this Declaration, the By-Laws and of any regulations lawfully adopted from time to time.
- (b) No unit shall be rented by its owner for transient or hotel purposes, but each such owner shall have the right to rent or lease, and a tenant or subtenant to sublease, his unit for residential use, but only as provided by the immediately preceding subparagraph (a) hereof.
- (c) No bulding, fence, wall, patio, driveway, or other structure shall be commenced, erected or maintained upon the Properties, nor alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location in relation to surrounding structures and topography, be submitted to and approved by the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Association. In the event the Association fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this paragraph will be deemed to have been fully complied with.
- (d) No animals, livestock or poultry of any kind shall be raised, bred or kept upon or within any unit, except that dogs, cats and other household pets may be kept subject to the rules therefore established from time to time by the Association. It is expressly within the power of the Association to provide for the exclusion of any dog or cat or any other household pet.
- (e) No advertising signs, except one of not more than five square feet indicating the unit for rent or sale and no billboards, unsightly appearances or nuisances shall be erected, placed or permitted to remain on any lot. No business activities of any kind shall be conducted in or on any unit; provided, however, that the covenants contained in this paragraph shall not apply to the business activities, construction, advertising, signs or billboards of the Declarant or its agents or employees during the sale period of units, or to the Association in the furtherance of its powers and purposes as set forth in this Declaration, or by the Bylaws.

- (f) No boats, campers, trailers or snowmobiles shall be stored or parked on any portion of the common area for a period longer than twenty-four (24) hours without the prior written consent of and in the location specified by the Association.
- There shall be no alteration or further (g) improvement of the real property constituting the common elements without prior approval in writing by the owners of not less than 75% of the common elements except as provided by the Bylaws, but any such alteration or improvement shall not interfere with the rights of any unit owner. The cost of such work shall not be assessed against a bank, life insurance company, or federal savings and loan association which acquires its title as the result of owning a mortgage upon a unit unless such an owner shall approve the alteration or improvement, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. The share of any cost not so assessed shall be assessed to the other unit owners in the proportions which their shares in the common elements bear to each other. There shall be no change in the shares and rights of a unit owner in the common elements which are altered or further improved, whether or not the unit owner contributes to the cost thereof.
- INSURANCE: The Association shall obtain and continue in effect at all times for the benefit of the Association and individual owners, as well as for any others having any interest in the property or any part thereof, as the interest of the Association and as such appurtenance may then appear to be, blanket liability, fire and extended coverage insurance to cover all of Common Areas A and B, but not interior contents of the individual units, including all improvements of whatsoever nature, in such form and such amounts as it shall deem necessary and desirable. Nothing herein shall prejudice the right of any individual unit owner from carrying additional insurance in his own behalf. The premiums for the insurance procured by the Association shall be common expense and shall be paid in the same manner and at the same times applicable to other common expenses.

If property, or any part thereof, shall be damaged or destroyed by fire or other casualty for protection against which insurance is herein required to be procured, the Association shall receive, as trustee for any person having an interest in any insurance indemnity, all proceeds from such insurance and shall apply all such proceeds to the rebuilding, repair or restoration of the property, except as limited by paragraph 11 below.

11. RECONSTRUCTION OF DAMAGED PROPERTY:

- (a) If the damaged property is a building, and if units therein to which 50% or more of the common elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty it is determined under paragraph 16 that the project shall be terminated, as such.
- (b) If the damaged property is a building, and if units therein to which more than 50% of the common elements are appurtenant are found by the Board of Directors to be not tenantable, the damaged property will not be reconstructed or repaired and the project will be terminated under paragraph 16 unless within 60 days after the casualty the owners of at least 75% of the common elements agree in writing to such reconstruction or repair. No mortgagee shall have any right to participate in the determination as to whether damaged property shall be reconstructed or repaired.
- (c) Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is a building, by the owners of not less than 75% of the common elements, including the owners of all damaged units, which approval shall not be unreasonably withheld.
- (d) If the building(s) is not to be repaired, then any insurance proceeds collected shall be allocated to the various interest holders, as their interests then appear.
- 12. <u>VOTING RIGHTS</u>: Voting rights are established in direct proportion to ownership of the project property as set forth in paragraph 5, supra; provided, however, that until 75% of the project units have been first conveyed from Declarant to any outside person the Declarant shall exercise full control of the Association consistent with the provisions contained herein and by the Building Unit Ownership Act. Upon the conveyance of 75% of the project units, Declarant shall vote only such voting rights as are established by paragraph 5, supra.

- 13. AGENT: The agent for service of any notice of process upon the Association shall be the then President of the Association, at the Presidents home address.
- 14. AMENDMENT: This Declaration may be amended by the Association at a meeting thereof held in accordance with the By-Laws for that purpose, but no such amendment shall be valid or take effect unless and until the same shall have been approved by the affirmation votes of the Association members representing at least 75% of the voting authority outstanding at such time.
- 15. <u>DEFINITIONS</u>: The definitions set forth in Sec. 70-4-2 of the Building Unit Ownership Act are applicable hereto and made a part hereof.
- * 16 REMOVAL FROM PROVISIONS OF THE BUILDING UNIT OWNERSHIP ACT AND THIS DECLARATION:
 - (a) All unit owners may remove a property from the provisions of the Building Unit Ownership Act by an instrument to that effect, duly recorded; provided that the holders of liens affecting any unit shall consent or agree by instrument duly recorded, provided that their liens be transferred to the percentage of the undivided interest of the debtor unit owner in the property as hereinbefore provided.
 - (b) Upon removal of the property from the provisions of the Building Unit Ownership Act, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by an owner in the common areas and facilities. (See Sec. 70-4-16, N.Mex. Stat.)

197 _____. WITNESS OUR HANDS this \$7/2 day of april.

CARLOS BLANCO

EMMA C. BLANCO, his wife

STATE OF NEW MEXICO) SS: COUNTY OF DONA ANA The foregoing instrument was acknowledged before me this day of the day of th

My Commission Expires:

ti 3, 1976

Amendment #1

ARTICLE III, Section 4 of the By-Laws of ALAMO MISSION CONDOMINIUMS ASSOCIATION shall be amended as follows:

Quorum: The presence at the meeting of members entitled to cast, or of proxies entitled to cast, 25% of the then existing voting rights of the membership shall constitute a quorum for any action except as otherwise provided in the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented.

In WITNESS where of, we, being all of the Directors of Alamo Mission Condominiums, have hereunto set our hands this 15+6 day of APRIC 1992.

Elwood Baas

Anna Matkin

Fred Chilton



State o New Mexico

S.S.

County of Dona Ana

On April 15, 1992, before me personally appeared personally known to me to be the person whose name is subscribed to the within instrument, as witness thereto, who, being by me duly sworn, deposes and says that he/she was present and saw ama Mh/khe same person described in and whose is subscribed to the within and annexed instrument name party thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request hisod Bass Annall to This

Signature (Fred Chilton)

Subscribed and sworn/affirmed to before me by this ______, 1992.

L.S.

My Commission Expires:

11. 11/047

State of N. Mex., Co. of Dona Ana, ss RECEPTION NO. 7425 | hareby certify that this instrument was filed for record and duly recorded on.

at 1:51 o'clock P. Page 7 Page 7/5 -Records of said County, Ruben Ceballos DEPUTY

