

DECLARATION OF CONDOMINIUM
OF
ECHO LANE VILLAS

Pursuant to the New Mexico Building Unit Ownership Act, referred to as the Act, Sections 47-7-1 to 47-7-28, New Mexico Statutes Annotated, 1978 Compilation, William Kiser, Inc., referred to as the Declarant, states:

1. Recitals. Declarant is the owner of certain real property located at Echo Lane, Las Cruces, New Mexico, and more particularly described as follows:

Tract A, Block 9, Majestic Hills No. 2, as shown on the plat of the subdivision recorded on August 13, 1973, at Plat Book 11, Page 55 - 61 of the records of the Clerk of Dona Ana County, New Mexico.

The Declarant is also the owner of certain buildings and other improvements previously constructed or to be constructed upon the real property, together which constitute a condominium project under the terms of the Act, and it is the intention of the Declarant to divide the project into condominiums and to sell and convey the condominiums to various purchasers, subject to the covenants, conditions and restrictions of this instrument.

2. Definitions. For the purposes of this instrument the following terms are defined as follows:

A. Association - all of the unit owners acting through Echo Lane Villas, Inc., a New Mexico non-profit corporation.

B. Board - the board of directors of Echo Lane Villas, Inc.

C. Building - a building or group of buildings having a total of two or more units and comprising a part of the property.

D. Common Areas and Facilities - unless otherwise provided in this declaration, the land on which the buildings are located; the foundations, columns, girders,

beams, supports, main walls, roofs, halls, corridors, lobbies, stairways, fire escapes, entrances and exits of the building, the basements, yards, gardens, parking areas storage spaces, installations of central services including power, light, gas, water, heating, refrigeration, airconditioning, incinerating, the elevators, tanks, pumps, motors, fans, compressors, ducts, and all apparatus and installations existing for common use, the community and commercial facilities provided in this Declaration, and all other parts of the property necessarily in common use or convenient to its existence, maintenance and safety.

E. Common Expenses - all sums lawfully assessed against the unit owners by the Association, expenses of administration, maintenance, repair or replacement of the common areas and facilities, and expenses declared common expenses.

F. Common Profits - the balance of income, rents, profits and revenues from the common areas and facilities remaining after the deduction of common expenses.

G. Declarant - William Kiser, Inc., a New Mexico corporation.

H. Limited Common Areas and Facilities means common areas and facilities designated in this declaration as reserved for use of certain units to the exclusion of the others.

I. Majority or Majority of Unit Owners - the majority of voting unit owners.

J. Owner - the person or persons owning a unit in fee simple absolute and an undivided interest in the fee simple estate of the common areas and facilities in the percentage established by this declaration.

K. Person - individual, corporation, partnership,

combination, association, trustee or other legal entity.

L. Property - the land, the building, improvements and structures owned in fee simple absolute, all easements, servitudes, rights, and appurtenances belonging thereto, and all chattels intended for use in connection therewith, which have been or are intended to be submitted to the provisions of the Building Unit Ownership Act.

M. Special Expenses - charges against a particular unit owner for expenses of administration, maintenance, operation and other services attributable to the particular unit owned by such unit owner and for his special benefit as distinguished from the general benefit of the property as a whole or the common areas and facilities.

N. Unit - a part of the property intended for residential purposes, including one or more rooms or enclosed spaces located on one or more floors in a building, and with a direct exit to a common area leading to a public street or highway, together with any attached garage or carport.

3. Submission to Act. The Declarant submits the property to the Act as it now exists and may later be amended and the Declarant publishes and declares that all of the property is and shall be held, owned, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the Act as amended from time to time and subject to the rights, easements, privileges, covenants and restrictions set forth in this Declaration, which shall run with the land and shall be a burden and benefit to the Declarant and its successors and assigns and any person acquiring or owning any interest in the property and their grantees, successors, assigns, heirs, personal representatives, and other successors in interest.

4. Buildings, Units, Common Areas and Facilities and Ease-

ments. The buildings, apartments, common areas and facilities and easements are as follows:

A. Description of Building. There shall be one building, containing a total of four units in Phase I. The building shall be of frame stucco construction, single story and no basements.

B. Description of the Units. Each of the units is numbered and designated as set forth on the attached Exhibit A. The buildings and the units each contain are set out as to the dimension and location with respect to the boundary of the land submitted by this Declaration, the location with respect to the other units, the designation or unit number by which the unit shall be described, the approximate number of square feet contained in each unit, and the value of the property and of each unit, are all set out on the diagrams attached to and made a part of this Declaration as Exhibit A.

C. Boundaries and Composition of Units. The boundaries of each unit as shown on the attached floor plan pertaining to it, are and shall be the interior finished surfaces of the perimeter walls, floors, ceilings and the area enclosed by the garage or covered by the carport. Each unit includes both the portion of the unit building as described and the space so encompassed, excepting the common facilities located in the building. The individual ownership of each unit shall further include the interior construction, fixtures, equipment and appliances and the garage, carport and exterior fence or wall which are designated and intended solely for the benefit of and to exclusively serve the particular unit in or to which the same are located or attached, and which are not designated or intended for the benefit, support, service, use or enjoyment of any other unit, such as, for example, the non-bearing interior walls and other

non-bearing and non-supporting interior partitions, the interior floor finish, including carpeting and other floor covering, the finished walls and ceilings, the closets, cabinets, and shelves, the sills adjoining the walls, the individual lighting and electrical fixtures and appliances, equipment, heating and cooling apparatus, all glass or glass plate in any window or forming part of any wall in or of the unit, and all interior and exterior doors of the unit.

D. Description of Common Areas and Facilities. The common areas and facilities are described as follows:

The real property described on Exhibit A, the areas designated common areas on Exhibit A, and the easements designated on Exhibit A, and all servitudes, rights and privileges belonging or in any way appertaining to them.

The foundations, exterior walls and roofs of the buildings.

The common grounds, parking areas, walks, and recreational areas and facilities.

The chattels and supplies used for the maintenance of the common areas and facilities.

E. Ownership of Units. Each owner shall be entitled to sole ownership possession of his unit. Each owner shall be entitled to an undivided interest in the common area in the percentage expressed in Exhibit A. The percentages of undivided interest of each owner in the common area as expressed in Exhibit A shall have a permanent character and shall not be altered without the consent of all owners expressed in an amended declaration duly recorded, and subject to the provisions of the following paragraph. The percentage of the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or

released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each owner may use the common area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other owners.

An owner shall not be deemed to own the undecorated or unfinished surface of the perimeter walls, floors, ceilings, windows and doors bounding his unit, nor shall the owner be deemed to own the utilities running through his unit which are utilized for, or serve more than one unit, except as a tenant in common with the other owners. An owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors bounding his unit.

F. Apportionment of Interest. The interest in the common areas and facilities attributable to each unit shall be apportioned based upon the unit itself as a percentage of all the units in the property. The percentage interest shall change if additional units are added after the filing of this Declaration.

5. Additional Construction and Percentage of Undivided Interest and Restrictions. Additional construction is contemplated, in four additional phases until a total of 33 units in five phases have been built, and this Declaration, directed to Phase I, contemplates a unity of use and development with subsequent phases. Accordingly, the Declarant and each owner covenant and agree to the reduction of the percentage of undivided interest as defined in Exhibit A, conditioned upon further construction as indicated on Exhibits A. This Declaration may be amended without the consent of any owner by the Declarant or its successor in title to all or any portion of the property at

any time so as to subject to the provisions of the Building Unit Ownership Act of New Mexico such additional phases as may be constructed in accordance with the plans shown on Exhibit A. Any such amendment shall contain the information required by the Act and from and after the recording of the amendment for amendments the condominium shall include the additional construction. The Declarant or any successor in title shall have the right prior to the execution and recording of the respective amendment to change the number, size, layout and location of the units and buildings contemplated by the amendment. Declarant accepts and reserves, for the benefit of subsequent phases, rights of way, of ingress and egress, by vehicle or foot, on, upon and over the driveways and walks in this phase, Phase I, and the rights to connect with, make use of and maintain, repair, and replace utility lines, pipes, conduits and drainage lines which may from time to time be along areas in this Phase I. The reservations contained and set forth above shall become null and void in the event all of the subsequent phases are included in the condominium project. Each owner irrevocably appoints the Declarant his attorney-in-fact to execute and record such amended declarations as may be reasonable or necessary to include subsequent phases in the property.

6. Removal. All owners may remove a property from the provisions of the 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 owner in the property. Upon removal of the property from the provisions of the Act, the property shall be deemed to be owned in common by the owners. The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by an

owner in the common areas and facilities.

7. Limitations on Use of Units and Common Area. The units and common area shall be occupied and used only as follows:

A. Each unit shall be used for residential purposes only and no business or commercial enterprise of any kind shall be permitted.

B. There shall be no obstruction of the common area. Except in the case of designated storage areas, nothing shall be stored in the common area without the prior consent of the Board.

C. Nothing shall be done or kept in any unit or in the common area which will increase the rate of insurance on the common area, without the prior written consent of the Board. No owner shall permit anything to be done or kept in his unit or in the common area which will result in the cancellation of insurance on any unit or any part of the common area, or which would be in violation of any law. No waste will be committed in the common area.

D. No sign of any kind shall be displayed to the public view on or from any unit or the common area, without the prior consent of the Board.

E. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any unit or in the common area except pets of a type and size approved by the Board subject to such regulations as the Board may adopt from time to time.

F. No noxious or offensive activity shall be carried on in any unit or in the common area, nor shall anything be done therein which may be or become annoyance or nuisance to the other owners.

G. Nothing shall be altered or constructed in or

removed from the common area, except upon the written consent of the Board.

H. There shall be no violations of rules for the use of the common area adopted by the Board and furnished in writing to the owners, and the Board is authorized to adopt such rules.

I. None of the rights and obligations of the owners created in this declaration, or by the deed creating the condominiums shall be altered in any way by encroachments due to settlement or shifting of the structures or any other cause.

8. Easements. A valid easement shall exist in each unit and in each portion of the common areas and facilities for the benefit of each owner, and each utility company for the installation, maintenance, repair, removal or replacement of any and all utility lines, pipes, wires, conduits, facilities and equipment serving the building or buildings as a whole or in the individual unit, and ownership of the units and interest in the common areas and facilities shall be subject to such easements.

Each unit is conveyed together with an easement for the continuance of all encroachments by the unit or any adjoining units or which may come into existence afterwards as a result of settling or shifting of the building or a result of repair or restoration of the building or of the unit, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings or by reason of an alteration or repair to the common areas made by or with the consent of the Board. Each unit is conveyed subject to easements in favor of adjoining units and in favor of the common areas for the continuance of all encroachments of such adjoining units or common areas on the unit, now existing as a result of construction of the buildings, or which may impair the structural

which may come into existence afterwards, as a result of settling or shifting of the building, or as a result of repairing or restoration of the building or of any adjoining unit or of the common area after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common areas made by or with the consent of the Board. The easements created by this paragraph shall not operate in favor of an owner or owners if the encroachment occurred due to willful conduct of the owner or owners.

9. Owner's Obligation to Repair. Except for those portions which the Association is required to maintain and repair, if any, each owner shall at his expense keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his unit. In addition to decorating and keeping the interior of the unit in good repair, the owner shall be responsible for maintenance, repair or replacement of any air-conditioning, plumbing fixtures, water heaters, heating equipment, or other fixtures and appliances that may be in or connected with the unit.

The owner shall promptly discharge any lien which may be filed against his unit and shall otherwise abide by the provisions of Section 47-7-9 of the Act.

10. Prohibition Against Structural Changes by Owner. The owner shall not, without first obtaining written consent of the Board, make or permit to be made any structural alteration, improvement or addition in or to his unit or in or to the exterior of the buildings or other common area. The owner shall do no act nor any work that will impair the structural soundness or

integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The owner shall not paint or decorate any portion of the exterior of the building or other common area without first obtaining written consent of the Board.

11. Entry for Repairs. The Board or its agents may enter any unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the owner as practicable, and any damage caused thereby shall be repaired by the Association out of the common expense fund.

12. Sale, Leasing or Other Alienation. The owners shall sell, lease or alienate their units only as follows:

A. Sale. No owner may dispose of a unit or any interest in a unit by sale without the approval of the Board, which approval shall be obtained in the manner provided in this declaration, except for conveyances by devise or inheritance, conveyance by one joint owner of a unit to one or more other joint owners of the same unit, or a conveyance to an owner's spouse, parents, children or syblings.

An owner intending to make a sale of a unit or any interest in the unit except as provided above, shall give written notice to the Board of such intention, together with the name and address of the intended purchaser and such other information as the Board may reasonably require in connection with the transaction. The owner shall by the notice, also furnish the Board with the terms and conditions of the proposed sale. The giving of the notice shall constitute a warranty and a representation by the owner to the Board and to any purchaser produced by the Board as provided in this

Declaration, that the owner believes the proposal to be bona fide in all respects. No proposed transaction shall be deemed bona fide which is not evidenced by a written contract of sale, subject to the approval and right of first refusal contained in this Declaration, executed by the selling owner and the proposed purchaser and containing all the terms of the sale proposed to be made.

B. Within 20 days after the receipt of the notice described in the paragraph above, the Board shall either approve the transaction or furnish a purchaser satisfactory to it, which purchaser may be the Association or one or more of its members, and the purchaser shall execute a contract of sale in accordance with the terms of the notice described in the above paragraph within 10 days after the selling unit owner is given notice by the Board that such purchaser is being furnished by the Board. Failure of the Board to either approve the sale or furnish an appropriate substitute purchaser within the 20-day period for any reason whatsoever shall be deemed to constitute approval of the sale, following which the Board shall, nevertheless, prepare and deliver written approval in recordable form if requested by the selling owner.

The Declarant shall not be subject to this paragraph in the first sale of any unit owned by the Declarant.

C. Lease. Any owner may lease or rent his unit to another person or persons subject to the provisions of this Declaration, the Bylaws and the rules, regulations and supervisory powers of the Board, and further subject to the approval by the Board of the proposed tenant and the proposed lease prior to its effective date, provided that such approval shall not be unreasonably withheld.

13. Damage or Destruction and Restoration of Buildings. In the event of damage or destruction of all or any part of the buildings the following rules shall apply:

A. Sufficient Insurance. If the improvements forming a part of the property, or any part of the property, including any unit, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against the loss or damage, and payable by reason of the loss or damage, shall be sufficient to pay the cost of repair or restoration or reconstruction, then the repair, restoration or reconstruction shall be undertaken and the insurance proceeds shall be applied by the Board or the payee of the insurance proceeds in payment for the repairs, restorations or reconstruction; provided, however, that if within 30 days after the damage or destruction, the unit owners elect either to sell the property as provided in paragraph 15.D. or to withdraw the property from the provisions of the Act, then the repair, restoration and reconstruction shall not be undertaken.

B. Insufficient Insurance. If the property or the improvements on the property so damaged are not insured against the risk causing the loss or damage, or the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, and the unit owners do not, by affirmative vote of at least two-thirds of the total vote, at a meeting of the Association duly called for such purpose, voluntarily make provision for the repair, restoration or reconstruction of the improvements within 160 days after the damage or destruction, then the insurance indemnity, if any, shall be delivered prorata to the owners sustaining loss or damage, and the unit owners shall elect either to sell the

property as provided in this declaration or to withdraw the property from the provisions of this Declaration and from provisions of the Act.

C. Extent of Repairs. Repairs, restoration or reconstruction of the improvements as used in this paragraph means restoring the improvements to substantially the same condition in which they existed prior to the fire or other disaster, with each unit and the common areas and facilities having the same vertical and horizontal boundaries as before.

D. Sale of the Property. If all of the buildings and improvements on the property are damaged or destroyed, the owners, by affirmative vote of at least three-fourths of the total vote of the Association cast at a meeting of the Association duly called for such purpose, may elect to sell the property as a whole. Such action shall be binding upon all owners, and it shall then become the duty of each owner to execute and deliver such instruments and perform all acts which may be necessary or convenient to effect the sale; provided, however, that any owner who did not vote in favor of the action and who has filed written objection to the action with the board within 20 days after the date of the meeting at which the sale was approved shall be entitled to receive from the proceeds of the sale an amount equivalent to the value of his interest, as determined by a fair appraisal, less the amount of any unpaid assessment or charges due and owing from the owner. In the absence of agreement of an appraiser, the owner and the Board may each select an appraiser, and the two so selected shall select a third, and the fair market value, as determined by majority of the three so selected, shall control. If either party fails to select an appraiser, then the one designated by the other party

shall make the appraisal.

14. Remedies for Breach of Covenants, Restrictions and Regulations. If any covenant, restriction or regulation applicable to the property is violated the following remedies shall apply:

A. Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or the provisions contained in this Declaration, shall give the Board the right, in addition to the rights set forth elsewhere in this Declaration or provided by law, to enter upon the property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing, or condition that may exist in the unit contrary to the intent and meaning of the provisions of this Declaration, and the Declarant for its successors or assigns or the Association or its agents, shall not thereby be deemed a trespasser, or to enjoin, abate or remedy by appropriate legal proceedings the continuance of any breach.

B. Termination of Ownership. If any owner, either by his own conduct or by the conduct of any other occupant of his unit, shall violate any of the covenants or restrictions or provisions of this Declaration, or of the regulations adopted by the Association, and such violation shall continue for 30 days after notice in writing from the board, or shall occur repeatedly during any 30-day period after written notice or request to cure such violation from the Association then the Association shall have the power to issue to the defaulting owner a 10-day notice in writing to terminate the rights of the defaulting owner to continue as an owner and to continue to occupy, use or control his unit and thereupon an action in equity may be filed by the members of the Board

against the defaulting owner for a mandatory injunction against the owner or occupant or, subject to the prior consent in writing of any mortgagee having a security interest in the unit of the defaulting owner, which consent shall not be unreasonably withheld, or in the alternative, a decree declaring the termination of the defaulting owners' right to occupy, use or control the unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the owner in the property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the Court shall establish, except that the Court shall enjoin and restrain the defaulting owner from re-acquiring his interest at the judicial sale. The proceeds of any such judicial sale shall be first paid to discharge court costs, masters or commissioners fees, court reporter charges, reasonable attorney's fees and all other expenses of the proceeding, and all such items shall be taxed against the defaulting owner in the decree. Any balance of proceeds, after satisfaction of the charges and any unpaid assessments under this Declaration or any liens, may be paid to the defaulting owner. Upon the confirmation of the sale, the purchaser shall then be entitled to a deed to the unit ownership and to immediate possession of the unit sold and may apply to the Court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

15. Assessments and Maintenance Fund. There shall be a maintenance fund and assessments against the owners as follows:

A. Creation of Fund and Obligation for Assessments.

The Board shall establish a maintenance fund for the administration, maintenance, repair, replacement and improvement of the common areas and facilities of the property, for the exercise and the performance of its powers and duties and for the benefit of all of the owners and the administration, maintenance and operation of the property and for the enforcement of the provisions of this Declaration, which fund shall be financed or funded by assessments as provided in this Declaration, paid by all of the owners. The fund shall be administered on a fiscal year basis, which fiscal year shall end of May 31st of each year. Each year on or before April 30, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services, and supplies which will be required for the purposes set forth above, together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements and shall notify each owner as to the amount of each such estimate. The estimated amount shall be assessed to the owners according to each owner's percentage of ownership in the common areas and facilities as set forth in this declaration. On or before January 1 of each year, and the first of each and every month of the year, each owner shall be obligated to pay to the Board, or as the Board may direct, one-twelfth of the assessment made pursuant to this paragraph.

B. Management of the Maintenance Fund and Collection of the Assessments. On or before the date of each annual meeting of the Association, the Board shall supply to each owner an itemized accounting of the administration, maintenance and other expenses for the preceding fiscal year actually incurred and paid, together with a tabulation of the amounts

collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owners' percentage of ownership in the common areas and facilities to the next monthly installment due from the owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the common areas and facilities to the installments due in the succeeding six months after rendering the accounting. The Board shall accumulate and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may become necessary during the year shall be charged first against the reserve. If the estimated cash requirement proves inadequate for any reason, including nonpayment of any owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the owners according to each owners percentage ownership in the common areas and facilities. The Board shall serve notice of the further assessment on all owners by a statement in writing, giving the amount and reasons for the assessment, and such further assessment shall become effective with the monthly maintenance payment which is due not less than ten days after the delivery or mailing of the notice of further assessment. All owners shall be obligated to pay the adjusted monthly amount. When the first Board elected takes office, it shall determine the estimated cash requirement as defined above, for the period commencing thirty days after the election and ending on December 31st of the year in which the election occurs.

Assessments shall be levied against the owners during the period as provided in this paragraph. The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the owners shall not constitute a waiver or release in any manner of the owners obligation to pay the maintenance cost and necessary reserves, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the owners shall continue to pay the monthly maintenance charge at the then existing monthly rate established for the last previous period for which the monthly rate was established until the monthly maintenance payment which is due not less than ten days after the new annual or adjusted estimate shall have been mailed or delivered. The Board shall keep full and correct detailed books of account and records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. The records and the vouchers authorizing the payments shall be available for inspection by any owner or any representative of any owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. Upon ten days notice to the Board and payment of a reasonable fee, any owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from the owner. All funds collected pursuant to this paragraph shall be held and expended for the purposes designated in this paragraph and, except for such special assessments as may be levied against less than all of the owners, and for such adjustments as may be required to reflect delinquent or

unpaid assessment, shall be deemed to be held for the benefit, use and account of all the owners in the same percentages as their percentage ownership of the common areas and facilities. If an owner is in default in the monthly payment of the above charges or assessments for thirty days, the members of the Board may bring suit for and on behalf of themselves and as representatives of all owners to enforce collection of the delinquency or to foreclose the lien for such delinquencies as provided in this Declaration. There shall be added to the amount due the costs of the suit, together with legal interest and reasonable attorneys fees to be fixed by the Court. To the extent permitted by the Act, as from time to time amended, and by any Court decision or any statute or law now or later to become effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees, as above provided, shall be and become a lien or charge against the ownership of the unit involved when payable and may be foreclosed by an action brought in the names of the Board as in the case of foreclosure of liens against real estate. The lien shall take effect and be in force when and as provided in the Act, provided, however, that encumbrances owned or held by any bank, insurance company, or savings and loan association shall be subject as to priority, after written notice to the encumbrancer of unpaid common expenses, only to the lien of all common expenses on the encumbered unit which became due and payable subsequent to the date the encumbrancer acquires title to the unit. Any encumbrancer may from time to time request in writing a statement from the Board setting forth the unpaid common expenses with respect to the unit covered by its encumbrance and, unless its request shall be complied

with within twenty days, all unpaid common expenses which become due prior to the date of the making of the request shall be subordinate to the lien of the encumbrancer. In the event of a voluntary conveyance of a unit, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to the unit to the time of the grant or conveyance. Amendments to this paragraph shall only be effective upon unanimous written consent of the owners and their mortgagees. No owner may waive or otherwise escape liability for the assessments provided for by this paragraph by non-use of the common areas and facilities or by abandonment of his unit.

12. Association of Unit Owners. Each owner shall automatically be a member of Echo Lane Villas, Inc., a New Mexico non-profit corporation, which shall be the governing and administering body for all owners for the protection, preservation, upkeep, maintenance, repair and replacement of the common areas and facilities and the government, operation and administration of the property as a whole and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership shall automatically cease. Upon any transfer of ownership of any unit, regardless of how accomplished, the new owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in the Association.

13. Voting and Bylaws. At any meeting of the owners, each owner, including the Declarant, shall be entitled to cast a number of votes as shown on Exhibit C attached to this declaration and incorporated in it by reference. Any owner may attend and vote at the meeting in person, or by an agent duly appointed by an instrument in writing signed by the owner and filed with the

Association.

If a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a unit against the owner of the unit covered by the mortgage, then in the event and until the default is cured, the right of the owner of the unit to vote shall be transferred to the mortgagee recording the notice of default.

The administration of the property is governed by the Bylaws, a copy of which is attached to this declaration and incorporated in it as Exhibit D. No modification or amendment to the Bylaws shall be valid unless set forth in an amendment duly adopted and recorded.

14. Administration of the Property. The property shall be administered by the Association acting through the Board as follows:

A. Composition of the Board. Each member of the Board shall be one of the owners, provided, however, that if an owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any director of the corporation, partner of the partnership, beneficiary or individual trustee of the trust, or manager of such other legal entity, shall be eligible to serve as a member of the Board.

B. General Powers and Duties of the Board. The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the property in accordance with the provisions of this Declaration, the Articles of Incorporation of the Association, and the Bylaws, and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for from the maintenance fund provided for by this Declaration, the follow-

ing:

(1) Water, waste removal, natural gas, electricity and telephone and other necessary utility services for the common areas and facilities and, and if not separately metered or charged, for the units. Electricity, natural gas, and telephone services will be separately metered and charged to the units. The manner in which other utility services will be metered and charged may be determined by the Board.

(2) A policy or policies of fire insurance with such extended coverage as the Board shall determine to be reasonably required to protect against losses from fire and other casualties and covering the common areas and facilities and covering the replacement value of the units to provide for restoration of them to tenantable condition. The fire and casualty insurance shall be payable to the Board as trustees for each of owners in the percentages established in this Declaration as their percentage ownership in the common areas and facilities and to the owners mortgagees, if any, as their interest may appear.

(3) A policy or policies in amounts determined by the Board, insuring members of the Board, their agents and employees and the owners against any liability to the public or to the owners and their invitees or tenants, incident to the ownership or use of the common areas and facilities, and units.

(4) Workmen's compensation insurance to the extent necessary to comply with any applicable law.

(5) Landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the common areas and facilities, but not including the interior of the units, which the owners shall

paint, clean, decorate, maintain and repair, and such furnishings and equipment for the common areas and facilities as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the common areas and facilities.

(6) Construction, repair, and maintenance of parking places for the use of guests and visitors of the owners as the Board may determine to be reasonably necessary.

(7) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for, pursuant to the terms of this Declaration, by law, or which, in the Board's opinion, shall be necessary or proper for the benefit of all of the owners and the administration, maintenance, and operation of the property as first class condominium buildings or for the enforcement of this Declaration.

(8) Any amount necessary to discharge any mechanics' or materialmen's lien or other encumbrance levied against the entire property or any part of the property which may, in the opinion of the Board, constitutes a lien against the property or against the common areas and facilities rather than merely against the interests in them of a particular owner or owners. Where one or more owners are responsible for the existence of such a lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of the lien or liens shall be specially assessed to the particular owners.

(9) Maintenance and repair of any unit if the

maintenance or repair is necessary, in the opinion of the Board, to protect the common areas and facilities, or any other portion of the buildings and the owner or owners of the unit have failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of the maintenance or repair delivered by the Board to such owner or owners, provided that the Board shall levy a special assessment against the particular owner for the cost of the maintenance or repair.

(10) The services of any person or firm employed by the Board in furtherance of its general powers and duties above stated. The Board or its agents may enter any unit when necessary in connection with any maintenance, repair or construction inside the unit, or in connection with maintenance, repair or construction of common areas and facilities accessible from the unit, and for making emergency repairs to prevent damage to the common areas and facilities or to another unit, for which the Board is responsible. Such entries shall be made with as little inconvenience to the owner as practicable, and any damage caused by the entry shall be repaired by the Board at the expense of the maintenance fund.

C. Limitation of the Powers of the Board. The Board's powers enumerated above shall be limited in that the Board shall have no authority to acquire and pay for from the maintenance fund any capital addition or improvement, other than for the purposes of replacing or restoring portions of the common areas and facilities, subject to all of the provisions of this Declaration, having a total cost in excess of \$1,500.00, nor shall the Board authorize any structural alterations, capital additions to, or capital improvements of

the common areas and facilities requiring an expenditure in excess of \$1,500.00 without in each case obtaining the prior approval of the voting members holding a majority of the total votes. All vouchers for payment of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the President. The Board, at the direction of the voting members of the Association having a majority of the total votes, may adopt such reasonable rules and regulations as it may deem advisable for the maintenance, conservation, and beautification of the property, and for the health, comfort, safety and general welfare of the owners and occupants. Written notice of such rules and regulations shall be given to all owners and occupants, and the property shall at all times be maintained subject to the rules and regulations.

19. General Provisions. The following general provisions shall govern the administration and management of the property:

A. Until the Board provided for in this Declaration is formed, the Declarant shall exercise the powers, rights, duties and functions of the Board.

B. Upon written request to the Board, the holder of any duly recorded mortgage or deed of trust against any unit shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or owners whose unit is subject to the mortgage or deed of trust.

C. Notices required to be given to the Board or the Association may be delivered to any member of the Board or

officer of the Association either personally or by mail addressed to the officer or the member at his unit.

D. Notices required to be given any devisees or personal representative of a deceased owner may be delivered either personally or by mail to the party at his or its address appearing in the records of the Court in which the estate of the deceased owner is being administered.

E. Each grantee of the Declarant, by acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of ever character granted, created, reserved or declared by this Declaration and all impositions and obligations imposed by this Declaration shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of the owner in a like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

F. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce them, irrespective of the number of violations or breaches which may occur.

G. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, or any part of it, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

H. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of the rule against perpetuities or some analogous statutory provision, the rule restricting restraints on alienation, or any other statutory or common law rule imposing time limits, then the option, privilege, covenant, or right shall continue only until twenty-one years after the death of the last survivor of the now living decendants of the Declarant.

I. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium residential development. This Declaration may be amended by the unit owners by affirmative vote of at least three-fourths of the total vote of the Association, cast at a meeting of the Association duly called for such purpose.

J. The original agent for service of process upon the Association is William K. Kiser, 2217 East Missouri Avenue, Las Cruces, New Mexico 88001.

K. The provisions of paragraphs 4 and 15.B. may be amended, changed, modified or rescinded only by a written instrument setting forth the amendment, change, modification or rescission which has been unanimously approved by the Board, Association, and all persons having bona fide liens of record against any unit, such unanimous approval being shown by a sworn and acknowledged certificate from the President and Secretary of the Association, except as provided for the inclusion of additional phses as provided in paragraph 5. Other provisions of this Declaration may be amended, changed, modified or rescinded only by a written instrument setting

forth the amendment, change, modification or rescision which has been approved by the members of the Board and of the Association having at least three-fourths of the total votes of each body, such approval being shown by a sworn and acknowledged certificate from the President and Secretary of the Association. Any amendment, change, modification or rescision shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescision of any provision of this Declaration shall be valid or effective if such amendment, change, modification or rescision violates or conflicts with the Act as amended from time to time.

IN WITNESS WHEREOF, the Declarant has executed this Declaration and affixed its seal on the 18 day of July, 1980.

WILLIAM KISER, INC.

By

William K. Kiser
William K. Kiser

ATTEST:

Audith D. Kiser
Secretary

STATE OF NEW MEXICO)
County of Dona Ana) ss.

The foregoing instrument was acknowledged before me this 18th day of July, 1980, by William K. Kiser, President, of William Kiser, Inc., a New Mexico corporation, on behalf of said corporation.

[Signature]
Notary Public

My Commission Expires:

9-24-72

JOHN S. FLETO
NOTARY
PUBLIC
STATE OF NEW MEXICO

NOTARY SEAL