

DECLARATION OF COVENANTS  
ELDORADO COMMUNITY IMPROVEMENT ASSOCIATION, INC.

THIS DECLARATION, made this 10<sup>th</sup> day of July 1972 by ELDORADO AT SANTA FE, INC., a New Mexico corporation, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of the real property referred to in Article II and described in Exhibit "A" of this Declaration, and intends to encourage the development thereon of communities, affording well-planned residential, commercial, recreational, institutional, and open-space uses, buildings, facilities and areas; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common lands and facilities and the providing of funds for the purposes hereinafter described; and to this end, desires to subject the real property referred to in Article II and described in Exhibit "A" to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

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

WHEREAS, Developer has incorporated or intends to incorporate under the laws of the State of New Mexico as a non-profit corporation the Eldorado Community Improvement Association, Inc. for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Developer declares that the real property referred to in Article II hereof and more particularly described in Exhibit "A" Attached hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

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

- (a) "Association" shall mean and refer to the Eldorado Community Improvement Association, Inc., its successors and assigns.
- (b) "The Properties" shall mean and refer to all such existing properties, and additional thereto, as are subject to this Declaration.
- (c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the properties and any facilities or improvements now or hereafter placed thereon and intended to be devoted to the common use and enjoyment of the owners of the properties.
- (d) "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties but, notwithstanding, any applicable theory of mortgage or deed of trust shall not mean or refer to the mortgage or trustee unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.

- (g) "Board" means the Board of Directors of Eldorado Community Improvement Association, Inc.
- (h) "Purchaser" shall mean the person or entity purchasing from Developer a lot under contract of sale not in default.
- (i) "Developer" shall mean and refer to ELDORADO AT SANTA FE, INC. and its successors or assigns of legal or equitable interest who are designated as such by instrument in writing signed by ELDORADO AT SANTA FE, INC. and recorded among the public records of SANTA FE COUNTY, specifically referring to these restrictions.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

ADDITIONS THERETO:

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of SANTA FE, State of New Mexico, and is particularly described as Exhibit "A", all of which real property shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

- (a) Addition to the Properties by the Developer. The Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of development, provided that such additions are part of a general plan of development and are approved by vote of the Board of Directors of the Association. Such general plan of development shall not bind the Developer, its successors and assigns, to make the proposed additions or to adhere to the plan in any subsection development of the land shown thereon. The additions authorized under this and the succeeding subsection shall be made by filing of record a supplementary declaration of covenants and restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.
- (b) Addition to The Properties by the Association. Annexation of additional property shall require the assent of two-thirds of the Class A Members and two-thirds of the Class B Members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty days nor more than sixty days in advance of the meeting, setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty percent of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting. In the event that two-thirds of the Class A membership or two-thirds of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.
- (c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving

corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the properties together with the covenants and restrictions established upon any other properties as one scheme.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of any Lot which is subjected by these Covenants to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

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

Class A. Class A members shall be persons as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section I. when more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B member shall be the Developer. The Class B membership shall be entitled to one vote for each Lot in which it holds the interest required for membership by Section I provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding the Class B membership; or
- (b) On July 1, 1982.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member.

### ARTICLE IV

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

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

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as, in the opinion of the Developer, the Association is able to maintain the same, at which time the Association shall accept title to the Common Properties when and if title thereto is conveyed by the Developer.

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

- (a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving or adding to the Common Properties and in aid thereof to mortgage said properties; and
- (b) The right of the Association to take such steps as are reasonable necessary to protect the above described properties against foreclosure; and
- (c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of the published rules and regulations; and
- (d) The rights of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
- (e) The right of the Developer and/or the Association to contract with utility companies and to operate its own utility companies to provide necessary public services including, without

limitation, the installation, maintenance, repair and replacement of central water and/or sewerage systems.

- (f) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless a certificate of the secretary of the Association has been recorded certifying that the members entitled to vote have cast a majority of the votes of the membership agreeing to such dedication, transfer, purpose or condition and unless written copies of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.
- (g) The right of the Developer and the Association to grant and release easements and right-of-ways through, over and across the common properties for the installation, maintenance and inspection of roads and liens for public water, sewer, drainage, fuel oil, or other utilities.

#### ARTICLE V

##### COVENANT FOR ASSESSMENTS

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

Section 2. Purpose of Assessment. The assessments levied by the Association shall be exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and owners in The Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties and to provide reasonable and necessary public services, including but not limited to, the payment of all principal and interest on loans made by the Association or advances made by the Developer; the costs and expenses of the Association, the payment of taxes and insurance on the Common Properties and repair, replacements and additions thereto, and for the costs of labor, equipment, materials, management, and supervision thereof, for fire protection, police protection, lighting and/or gas systems, garbage and trash collection, construction, repair and maintenance of roads and streets and drainage systems, installation, maintenance, repair and replacement of central water and/or sewerage facilities, and any and all other improvements, facilities and services that the Board shall deem to be necessary, desirable or beneficial to the to the interest of The Properties and Common Properties.

Section 3. Basis and Maximum of Annual Assessments. commencing January 1, 1973, the Annual Assessments (which must be fixed for all Lots) shall be at the annual rate not exceeding \$100.00 per Lot payable as the Board shall in its discretion determine. From or after January 1, 1974, the Annual Assessments may be increased by the Board of Directors as hereinafter provided for the next succeeding two (2) years, and at the end of such period of two (2) years, for each succeeding two (2) years.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the Annual Assessments for any year at the lesser amount provided that it shall be an affirmative obligation of the Association and its Board of Directors to fix such

assessments at an amount sufficient to maintain operate and administer the common properties and facilities and to repay the principal and interest on mortgages or other obligations of the Association.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Board of Directors of the Association or the Developer may levy a special assessment commencing with the date hereof, payable by installments or otherwise, to be used for the purpose of installation, maintenance, repair or replacement of an electrical and/or gas utility system(s), a piped water and/or sewer utility system(s) and streets, roads, and drainage system(s). Such special assessments shall be apportioned by the Board of Directors of the Association or the Developer on a per lot basis or on frontage foot basis as circumstances, current and future needs and costs may warrant.

Section 5. Quorum for Any Action Authorized Under Section 3 and 4. The quorum required for any action by the Board of Directors of the Association authorized by Sections 3 and 4 hereof shall be a majority of the Board present at the meeting of the Board of Directors entitled to vote thereon. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth in the Bylaws of the Association.

Section 6. Date of Commencement of Annual and Special Assessments. The annual or special assessments provided for in Sections 3 and 4 hereof shall commence on the date fixed by the Board of Directors of the Association as the date of Commencement.

Section 7. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement, the method of payment (by installments or otherwise) and the amount of the annual or special assessment against each Lot for each assessment period of at least thirty (30) days in advance of such date or period and shall at that time prepare a roster of the properties and assessments applicable there to which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto.

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

Section 8. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner; the Lien, Remedies of Association If the assessments are not paid on the date when due (being the dates fixed under Section 6 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum legal rate of interest, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not

relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I, Section 1 hereof; (c) all properties exempted from taxation by the laws of the State of New Mexico upon the terms and to the extent of such legal exemption.

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

#### ARTICLE VI GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, and assigns, for the term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of 50% of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. The Association, Developer, or any Owner shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violation, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association, Developer and any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the lot, collectible in the same manner as assessments thereunder.

Section 4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect or their applicability to any other Owners.

IN WITNESS WHEREOF, the undersigned has caused its seal to be hereunto affixed and these presents to be signed by its officer thereunto duly authorized the day and year first above written.

ELDORADO AT SANTA FE, INC

By:

Howard W. Friedman, President

SEAL

Secretary

STATE OF NEW YORK )  
 )SS:  
COUNTY OF NEW YORK )

On the 11<sup>th</sup> day of July, 1972 before me personally came and appeared Howard W. Friedman to me known, who, being by me duly sworn, did depose and say that he is the President of the corporation described herein, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

My Commission Expires:

Notary Public

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EXHIBIT "A"

Plat pages 2, 3 and 4 of Unit 1, Plat page 8 of Unit 2 and Plat page 13 of Unit 3 of Map entitled "ELDORADO AT SANTA FE", recorded in the Office of the County Clerk of Santa Fe County, New Mexico on July 10, 1972 as Document No. 334 885.

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