

EX 575 PG 879

ADDITIONAL DECLARATIONS OF RESTRICTIVE COVENANTS AND PROTECTIVE
EASEMENTS
THE DESERT VILLA ESTATES, AN ADDITION TO
THE CITY OF ALAMOGORDO, NEW MEXICO
RELATING TO THE DESERT VILLA ESTATES OWNERS' ASSOCIATION

STAGE I OF PHASE I

THIS DECLARATION, made on the date hereinafter set forth by
THE O'HARA'S, a partnership, hereinafter referred to as "Declarant",
joined by Jack E. Eichhorst and Julia C. Eichhorst, his wife.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in
Alamogordo, County of Otero, State of New Mexico, which is more
particularly described as:

A tract of land in the Northwest quarter of the
Northwest quarter of Section 11, T 17 S, R 9 E,
Alamogordo, Otero County, New Mexico, and being more
particularly described as follows:

Lots 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,
30, 31, 32, 33, and 34 of Block 2; Lot 32 of Block
7; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13,
14, of Block 3; and Lot 1 of Block 8, all fronting
on Challenger Avenue, and being Stage I, a part of
Phase I, of the Desert Villa Estates Addition to the
City of Alamogordo, Otero County, New Mexico as
shown on the official plat thereof filed in the
office of the County Clerk of Otero County, New
Mexico on the 17th day of October 1983, at Plat Book
30, pages 15 and 16.

EXCEPT that Declarant has conveyed said Lot 31,
Block 2, to Jack E. Eichhorst and Julia C.
Eichhorst, his wife, who join in this declaration of
covenants; THE O'HARA'S and the said Jack E.
Eichhorst and Julia C. Eichhorst, his wife, being
all the owners of the real property above described.

The covenants herein are addenda to the Restrictive Covenants

filed in Book 540, page 866, et seq., on October 17, 1983, as amended by the Restrictive Covenants filed on October 12, 1984 in Book 563, Page 845, et seq., in the records of Otero County, New Mexico.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Desert Villa Estates Owners' Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. The "Common Area" to be owned by the Association is described as follows:

A tract of land in said Desert Villa Estates, Phase I, Alamojordo, Otero County, New Mexico, being more particularly described as follows:

Beginning at the Northwest corner of Lot 1, Block 3 of said Desert Villa Estates, Phase I and going S 00 degrees 16' 22" W along the West line of said Lot 1 a distance of 268.00 feet; thence N 89 degrees 43' 38" W a distance of 185.37 feet to the East right-of-way line of Airport Road; thence N 00 degrees 03' 00" E along the East line of Airport Road a distance of 268.00 feet to the South right-of-way line of Challenger Avenue; thence S 89 degrees 43' 38" E along said South right-of-way line a distance of 186.41 feet to the place of beginning and containing 0.572 acres.

The "Common Area" is identical with, and is identified as "RECREATION AREA" on the official plat of the Desert Villa Estates, Phase I, Alamojordo, Otero County, New Mexico, filed on October 17, 1983, at Plat Book 30, Pages 15 and 16 in the office of the County Clerk, Otero County, New Mexico. The definition of "RECREATION AREA" shall be identical with that of "Common Area". The "Common Area" is appurtenant to said Stage I, Phase I, except as otherwise permitted under Article VI, Section 5 (b).

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to THE O'HARA'S, a partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development. "Declarant" does not include Jack E. Eichhorst and Julia C. Eichhorst, his wife.

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot

which is subject to assessment.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on March 1, 1990.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, 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 interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area. The specific facilities provided are a swimming pool and hot tub.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments:

Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to

the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, 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 Article will be deemed to have been fully complied with.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner,

shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval.

(a) As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment

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of this Declaration.

(b) Additional land within the area described in Deed Book 534, Page 804 of the land records of Otero County, New Mexico, may be annexed by the Declarant without the consent of members within ten (10) years of the date of this instrument (March 1, 1995) provided that the FHA and VA determine that the annexation is in accord with the general plan heretofore approved by them.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3th day of May, 1985.

Jack E. Eichhorst
Jack E. Eichhorst

Julia C. Eichhorst
Julia C. Eichhorst,
his wife

THE O'HARA'S,
a general partnership

Denny L. O'Hara
Denny L. O'Hara,
General Partner

Jean O'Hara
Jean O'Hara,
General Partner

Denny F. O'Hara
Denny F. O'Hara,
General Partner
By John O'Hara Atty in fact

Patricia Jean O'Hara
Patricia Jean O'Hara,
General Partner

Michael Martin O'Hara
Michael Martin O'Hara,
General Partner

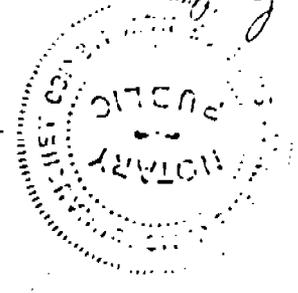
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STATE OF NEW MEXICO)
) ss:
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 8th day of May, 1985, on behalf of THE O'HARA'S, a general partnership, by Denny L. O'Hara, Jean O'Hara, Denny F. O'Hara, Patricia Jean O'Hara, and Michael Martin O'Hara, general partners.

Marlene J. McCaughy
Notary Public

My Commission Expires:
August 1, 1988



STATE OF NEW MEXICO)
) ss:
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 8th day of May, 1985, by Jack E. Eichhorst and Julia C. Eichhorst, his wife.

Marlene J. McCaughy
Notary Public

My Commission Expires:
August 1, 1988



STATE OF NEW MEXICO) ss.
OTERO COUNTY)
FILED FOR RECORD IN MY OFFICE
This 15 day of May 1985
at 4:10 o'clock P.M. and duly recorded
in Book 575 Page 879-890 of

Andrew C. Winham
Deputy

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