

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR SANTA TERESA PASCO HOME OWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by Lambert and Hinton, Inc., a New Mexico Corporation, and Santa Teresa Developers, hereinafter referred to as "Declarant"

WITNESSETH:

WHEREAS Declarant is the owner of certain property in Santa Teresa Subdivision, County of Dona Ana, State of New Mexico, which is more particularly described as:

A parcel of land situated within the Santa Teresa Grant, Section 21, T28S, R3E, N.M.P.M., Dona Ana County, New Mexico and is more particularly described by notes and bounds survey as follows: Beginning at the Southeast corner of the parcel herein described, whence meander corner No. 5 on the Westerly Boundary of the Santa Teresa Grant, Bears S39°36'01"W, a distance of 2328.86'; thence N67°34'35"W, a distance of 493.00'; thence N22°25'25"E, a distance of 273.21'; thence N03°26'36"W, a distance of 675.96'; thence S86°33'24"E, a distance of 283.66'; thence S89°12'55"E, a distance of 573.05'; thence S22°23'25"W, 1216.53' to the point of beginning and containing 15.203 acres more or less and otherwise described as all of Unit No. 3A of the Santa Teresa Subdivision as shown by the official recorded plat recorded in Plat Records No. 841.

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 Santa Teresa's Pasco Homeowners 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 this Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

A parcel of land situated in the Santa Teresa Grant T28S, R3E, N.M.P.M., Dona Ana County, New Mexico, and being more particularly described by metes and bounds survey as follows:

Beginning at the most southerly corner of parcel herein described whence Meander Corner No. 5 on the westerly boundary of the Santa Teresa Grant bears S29°52'33"W a distance of 2758.33 feet; thence

N03°26'36"W, a distance of 381.98 feet; thence

N86°33'24"E, a distance of 28.13 feet; thence

S89°12'55"E, a distance of 152.99 feet; thence

S22°25'25"W, a distance of 414.19 feet to the point of beginning and containing 0.83015 acres more or less.

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 Lambert and Winton, Inc, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

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 signed by 2/3rds 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 December 31, 1981.

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 and of the homes situated upon the properties.

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 less than, but 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, or 30% of all votes of each class of membership. 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, issuing a certificate signed by the 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 6 percent 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

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: Replacement and care of trees, shrubs, grass and sprinkler systems which are located outside of the fenced area on each lot. The Association shall have the right to install and maintain an underground water sprinkler system and any and other similar devices for maintenance of the landscaping and the Association shall have an easement to enter upon the property of any lot owner for the purposes of maintaining the landscaping or the water sprinkler at all times necessary and/or convenient. In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VI
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 VII

USE RESTRICTIONS

The use of each and every unit is hereby restricted as follows:

- (a) Each unit shall be used only as a single-family dwelling to be occupied by its owner and his family and guests or by tenants or subtenants of the owner and the guest of such tenants or subtenants. All such use shall be subject to the provisions of this Declaration, the Articles and By-Laws and of any regulations lawfully adopted from time to time.
- (b) Non-operable, derelict, or abandoned vehicles, conveyances shall be deemed unsightly nuisances and shall not be permitted to remain within the property. All two and three wheel motorized vehicles, dune buggies, and cycles, shall not be permitted to operate within the property or on streets of any subdivision of Santa Teresa.
- (c) No animals, livestock or poultry of any kind shall be raised, bred or kept upon or with any dwelling, except that dogs, cats and other household pets may be kept subject to the rules therefore established from time to time by the Association.

(d) No advertising signs, billboards, or unsightly appearances or nuisances shall be erected, placed or permitted to remain on any lot. The board of Directors at each annual meeting may elect, for a period not to exceed 12 months, to permit a for sale sign of not more than five square feet to be erected on a lot. Permission to allow for sale signs will expire each year on the date of the annual meeting. No business activities of any kind shall be conducted in or on any lot; provided, however, that the covenants contained in this paragraph shall not apply to the business activities, construction, advertising, signs or billboards of the Declarant or its agents or employees during the construction and sale period of lots, or to the Association in the furtherance of its powers and purposes as set forth in this Declaration or by the Articles or By-Laws.

(e) No boats, campers, trailers or snowmobiles shall be stored or parked on any portion of a lot which is visible or parked on any portion of the common area for a period longer than twenty-four (24) hours without the prior written consent of and in the location specified by the Directors of the Association.

(f) Entities supplying gas, electricity, telephone, water, sewer, solid waste disposal, television cable, and other similar services to the property are hereby granted and given rights of way over, across and through all of the Project Property, for the installation, maintenance, repair and replacement of any and all facilities necessary to the furnishing of these services. However, any specific entity, having once installed in, on, across, over or through any of the project area those initial facilities necessary to provide the project property or any part thereof the service or services furnished by it, shall be responsible for the reasonable restoration to the condition thereof immediately theretofore existing of those areas and/or improvements damaged or destroyed in the maintenance, repair or replacement of those facilities; provided, however, that trees, shrubs and other growing plants, where the continuing growth thereof interferes with the operation, maintenance, repair and replacement of any such facilities, may, from time to time, be trimmed back without the entities or facilities affected thereby assuming any liability for such actions. Likewise, a specific easement and right of way is granted in and to the entire area of the project as needed by any governmental unit or any other entity or person which may need to clear upon any property

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designated by the property perimeter for preservation or maintenance of health, safety, and the prevention of destruction of structures. It being specifically intended that such right of way and easement shall be and is hereby granted for law enforcement officials, whether local, state or national, fire department officials, health officials and other similar officials, together with any vehicles normally used by such officials.

ARTICLE VIII

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 land within the area described in Deed Book 214, Page 169 of the land records of Dona Ana County, New Mexico, may be annexed by the Declarant without the consent of the members within 5 years of the date of this instrument.

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IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto set its hand and seal this 14th day of December, 1976.

LAMBERT AND WINTON, INC.
Declarant

ATTEST *[Signature]*
Asst. Secretary

By: *[Signature]*
President

STATE OF NEW MEXICO)
COUNTY OF CURRY) ss.

The foregoing instrument was acknowledged before me this 14th day of December, 1976, by Andy J. Winton, President of Lambert & Winton, Inc., a New Mexico Corporation on behalf of said corporation.

NOTARY SEAL
NOTARY PUBLIC
My Commission Expires: February 1, 1979

[Signature]
Notary Public

SANTA TERESA DEVELOPERS
Declarant

By: *[Signature]*
Charles Rutledge
Attorney in Fact

STATE OF NEW MEXICO)
COUNTY OF DONA ANA) ss.

The foregoing instrument was acknowledged before me this 14th day of December, 1976, by Charles Rutledge, who executed the foregoing instrument on behalf of Santa Teresa Developers.

NOTARY SEAL
NOTARY PUBLIC
My Commission Expires: March 12, 1977

[Signature]
Notary Public

RECEIVED
DEC 16 1976
BY: *[Signature]*
MARTIN

NOTARY SEAL
NOTARY PUBLIC
My Commission Expires: 12/16/76