

FIRST AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR HIGH STREET RESIDENCES

THIS FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 29th day of January, 1987, by JIM MADDOX, INC., a New Mexico corporation (hereinafter "Grantor"), and completely amends, and is substituted for that certain Declaration of Covenants, Conditions, and Restrictions for High Street Townhouses recorded in the Bernalillo County, New Mexico, real estate records, on September 23, 1985, in Book Misc. 273A, Pages 592-613.

WHEREAS, Grantor is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community and to provide for the preservation of the values and amenities in the community by subjecting the property to the covenants, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of the property and each owner thereof.

NOW, THEREFORE, the Grantor declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth.

ARTICLE I.

DEFINITIONS

Section 1. The following words when used in this Declaration shall have the following meanings:

(a) "Lot" means the land identified as Lots 1A, 1B, 2A, 2B, 3A and 3B as shown on the Plat of Lots 1A, 1B, 2A, 2B, 3A and 3B, HUNING'S HIGHLAND ADDITION, as the same are shown on the plat thereof recorded in the Bernalillo County, New Mexico Real Estate Records on August 22, 1985, and refiled on September 26, 1985.

(b) "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and any amendment or modification thereto.

(c) "Grading Plan" means the grading plan prepared for the Property by Grantor and on file with the City of Albuquerque Building Department.

(d) "Fourplex" means each of the three (3) buildings to be constructed upon the Property, each of which is intended for use and occupancy as four (4) Living Units.

(e) "Owner" means the record owner of the fee simple title of a Lot or Fourplex or a lessee of a Lot pursuant to a leasehold agreement of a term of twenty (20) years or greater and shall include a contract purchaser of any Lot. Owner shall not include a contract seller of a Lot or the lessor of a Lot pursuant to a leasehold agreement with a term of twenty (20) years or greater.

(f) "The Property" means all of the real property described in Article II.

(g) "Setback" means the shortest distance between a structure and the property line.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

The following-described property situate in the City of Albuquerque, County of Bernalillo, State of New Mexico is made subject to all easements, covenants, conditions and restrictions set forth in this Declaration.

Lots 1A, 1B, 2A, 2B, 3A and 3B as shown on the Plat of Lots 1A, 1B, 2A, 2B, 3A and 3B, HUNING'S HIGHLAND ADDITION, an addition to the City of Albuquerque, which plat was recorded in the Bernalillo County, Real Estate Records on August 22, 1985, and refiled on September 26, 1985.

ARTICLE III

USE RESTRICTIONS

Section 1. All Lots within the Property are hereby restricted to Fourplex residential dwellings for residential use. All construction upon any Lot must be new construction and no existing building or structure may be moved from another site to a Lot.

Section 2. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Grantor to maintain during the period of construction and sale of the Fourplexes, upon such portion of the Property as the

Grantor may choose, such facilities as in the sole opinion of the Grantor may be reasonably required, convenient or incidental to the construction and sale of the Fourplexes, including, without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes.

Section 4. No advertising signs (except as provided in Section 5 of this Article) billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident thereof.

Section 5. The following signs shall be permitted on the Property:

A. One "for sale" or "for rent" sign per Fourplex, which sign shall not exceed five (5) square feet in area.

B. During the construction of each Fourplex, signs of a reasonable size and in a reasonable number may be placed on the Lots to identify the builders and architects and to market the Fourplexes. These signs shall be subject to the control of the Architectural Control Committee.

Section 6. No business activities of any kind whatsoever shall be conducted in any Fourplex or on any portion of the Property. Provided, further, however, the foregoing covenants shall not apply to the business activities, or the construction and maintenance of buildings, if any, of the Grantor, its agents and assigns, during the construction and sale period.

Section 7. No fences, hedges or walls shall be erected or maintained upon the Property except such as are approved in accordance with Article VII of this Declaration.

Section 8. No trucks of greater than three-quarter (3/4) ton shall be permitted longer than one (1) day on any Lot. No trailers or boats shall be permitted to remain within public view on any part of the Property longer than one (1) day. Nothing in this section shall be construed as limiting use of the Property during the construction and sale phase of the development.

Section 9. No oil drilling, oil development, oil refining, derrick or other structure designed for use in boring for oil or natural gas, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot.

Section 10. No temporary house, trailer, tent, garage, or other outbuildings shall be used on any Lot at any time as a

residence, either temporarily or permanently, and no residence placed or erected on any part of any Lot shall be occupied in any manner at any time prior to its being fully completed, provided, however, that during the actual construction or alteration of a building on any Lot, necessary temporary buildings for storage of material, etc., may be erected and maintained by the person doing such work.

Section 11. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done, placed, or stored thereon which may be or become an annoyance or nuisance to the neighborhood, or occasion any noise or odor which will or might disturb the peace, comfort, or serenity of the occupants of neighboring properties. Without limiting the generality of the foregoing, permitting disabled vehicles to remain on a Lot or doing mechanical or body work on any vehicle other than work which can be accomplished in a few hours, shall be deemed a noxious or offensive activity.

Section 12. Lots shall be cleared of all weeds, trash and all other detracting impediments and all rubbish, trash or garbage shall be regularly removed from each Lot. All Lots shall be kept clean and maintained during the course of construction.

Section 13. Front yard landscaping visible from street shall be installed within ninety (90) days (weather permitting) after substantial completion of each Fourplex constructed on

Lots. Landscaping design and materials should be compatible with adjacent Fourplexes.

Section 14. No cotton-bearing cottonwood trees or elm trees of any nature shall be planted or permitted to grow on any Lot.

Section 15. Where externally visible air conditioners are erected or installed, they shall be so installed that they will minimize visibility from the front street or in the case of corner Lots, from either the front or a side street. Roof mounted units shall be allowed, however, they shall be installed as to comply with this restriction as much as possible.

Section 16. No radio, television, citizens band, HAM, or other aerial antenna or tower, whether for transmitting or receiving, or any support thereof shall be erected, installed, placed or maintained, except those devices which may be erected, installed, placed or maintained and used entirely under the eaves or enclosed within a building or structure which do not extend above the highest point of the roof. However, a television antenna may be mounted on the roof provided it is inconspicuously located so as not to be easily visible from the street.

Section 17. Outside clotheslines or other outside clothes drying or airing facilities, above ground trash and garbage receptacles, ground mounted solar energy collectors and equipment, ground mounted air conditioning compressors and equipment shall be enclosed within a fenced service area or areas

so as to conceal them from the streets. Fencing or screening should be harmonious with the overall design of the structures on the Lot and which shield these structures in such a way as not to be visible from streets.

Section 18. In the event that a structure is destroyed, wholly or partially by fire or other casualty, said structure shall be properly rebuilt, repaired or replaced to conform to this Declaration, or all remaining structures, including the debris and foundations shall be removed from the Lot.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 1. An Architectural Control Committee, hereinafter referred to as the "Committee", is hereby established and shall be comprised of three (3) persons, who shall be appointed by the Grantor to serve for a period of five (5) years from the date hereof and until their successors shall be appointed and qualified. The initial members of the Committee shall be Jim Maddox, Barbara Maddox and John Myers. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Upon the Grantor selling all of the Lots the term of the initial members of the Committee shall automatically terminate and sixty-six percent (66%) of the Owners may elect substitute members of the Committee. Vacancies occurring as a result of the expiration of such five (5) year term shall be appointed by a majority of the

Owners who are present at a special meeting called for the purpose of filling such vacancy.

Section 2. No member of the Committee shall be entitled to any compensation for service performed on said Committee. A majority of the Committee may designate a representative to act for it.

Section 3. Before the commencement of the construction, remodeling, addition to, or alteration of or removal of any building, swimming pool, wall, fence, tank, out building or any other structure whatsoever, on any Lot, and further to include landscaping and landscaping construction including ponds, waterfalls, statues, retaining walls or other structural component, which is visible from any street, they shall apply to the Committee for approval. There shall be submitted to the Committee: (a) A complete set of plans, including but not limited to, foundations, floor plans, elevations, details, specifications which identify construction material, exterior color scheme, and a site plan showing the location of the structure on the Lot identifying all construction including but not limited to roof overhang lines, all setbacks at point of minimum distance to each property boundary, dimension of Lots, all walks, drives, patios, decks, and walls and/or fences and their construction materials, which set of plans and specifications upon approval will be retained by the Committee to remain on file; (b) if

deemed necessary by the Committee, the following may be required: (1) colors and samples of exterior materials, (2) wall sections, (3) roof plan, (4) details of exterior furnishings, (5) the Owner's proposed construction schedule, and (6) an architect's rendering showing the perspective view of the proposed construction. These renderings may be in pencil or ink line drawings.

Section 4. No building, structure, or improvements of any kind, including walls and landscaping, shall be erected, altered, placed or maintained upon any Lot unless, and until the complete set of final plans and specifications have been approved in writing by the Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Any resurfacing or painting of the exterior wall areas shall be completed in a color texture as close to the original as possible, unless the consent of the Committee is obtained in writing as to a different color and/or texture and except as hereafter provided.

Section 5. The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event such plans and specifications are not in accord with all the provisions of these restrictions, or if a design or color scheme in the proposed structure is not in harmony with the general surroundings or in harmony with the Lot or adjacent structure, or if the plans and specifications

submitted are incomplete, or if the Committee deems the plans and specifications to be contrary to the spirit and intent of this Declaration, or contrary to the interest and the welfare and rights of all or any part of the Property.

Section 6. In the event the Committee shall fail to approve or disapprove the plans, specifications and other such information as may be required within thirty (30) days after submission, then such approval shall not be required, provided that no building or structures shall be erected which violate any of the terms of this Declaration.

Section 7. Neither the Committee, it's members, nor the Grantor shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted or as revised by said Committee or the Grantor, or for work done pursuant to the requested changes by said plans and specifications.

Section 8. A majority of the Committee may, from time to time, grant exceptions or variances not in substantial conflict with this Declaration, without the consent of the Owners.

Section 9. The work of constructing any building on any part of the Property shall be completed within six (6) months from the commencement thereof.

Section 10. The Committee shall keep on file copies of the Grading Plan.

ARTICLE V

BUILDING LOCATION

Section 1. All Lots shall have a front yard setback of at least fifteen feet (15').

Section 2. All Lots shall have a rear yard setback of at least fifty-five feet (55').

Section 3. All Lots shall have a side yard setback of at least four feet (4') unless the building is built abutting the side lot line, or unless the adjoining Lot Owner has given his written consent and the Committee has approved the reduced setback, except as provided in Sections 7 and 8 of this Article.

Section 4. On corner Lots the sideyard setback on the side adjacent to the street shall be at least nine feet (9').

Section 5. Walls and fences may be constructed in any setback area, provided approval of the Committee is obtained.

Section 6. Ordinary projection of sills, chimneys, belts, courses, cornices, and ornamental features may project up to two feet (2') into the setback areas.

Section 7. A one foot (1') tolerance by reason of mechanical variance of construction is hereby automatically allowed for the setback requirements.

Section 8. The Architectural Control Committee shall have the right to permit reasonable modification of the setback requirements where, in the Committee's discretion, the setback requirements constitute an extreme hardship to the Owner.

ARTICLE VI

EASEMENTS

Section 1. Drainage Easement: The rear fifty-eight feet (58') of each Lot is encumbered by a drainage easement (the "Drainage Easement") which is for the benefit of all of the other Lots. The Drainage Easement is for the purpose of allowing the passage of surface drainage waters across the Lots pursuant to the grading and drainage plan approved by, and on file with, the City of Albuquerque for the Property (the "Drainage Plan"). No Owner shall be permitted to alter the grade of the portion of his Lot encumbered with the Drainage Easement, or construct any improvements on the Drainage Easement which would impair or modify the flow of drainage waters across the Drainage Easement. Each Lot Owner shall maintain the portion of his Lot encumbered with the Drainage Easement.

Section 2. Common Driveway Easement. The Owners of Lots 2A and 2B, and Lots 3A and 3B shall have a common driveway easement ("Driveway Easement") over the southerly twelve feet (12') of Lot 2B, and the northerly twelve feet (12') of Lot 3A on the eastern fifty-eight feet (58') of Lots 2B and 3A. The Owners of Lots 2B and 3A may not alter the terrain or construct any improvements on the Driveway Easement which would impair its use as a driveway. The Owner's of Lots 2B and 3A shall maintain their respective Lots in a neat and orderly manner.

Section 3. Each Lot shall have an easement on and over the adjacent Lots for surface water drainage runoff from the Fourplex's roof.

ARTICLE VII

WALLS AND FENCES

Section 1. The Owner of Lot 1A shall maintain the wall on the north side of Lot 1A which has been constructed with the original construction.

Section 2. Where there is a grade difference of more than eighteen inches (18") between two Lots, a retaining wall will be required which will extend to a point where the grade difference becomes less than twelve inches (12").

Section 3. No chainlink, barbed wire, welded wire, or welded pipe fence shall be permitted on any Lot.

Section 4. All gates, if any, providing access between the front and back yards must be of either wood construction similar to the rear and side yard fences, or wood painted to match the color of the Fourplex or the color of the Fourplex's trim.

Section 5. Walls for purposes of visual screening, privacy, protection of swimming pools, etc., may be constructed between the front and rear setback lines, provided their style, color and materials are compatible with those of the Fourplex and other structures or improvements on the Lot.

ARTICLE VIII

DRAINAGE AND EROSION CONTROL

Section 1. Each Owner shall be responsible for the construction and maintenance of and the handling and disposal of all surface water drainage and storm runoff from their Lot.

Section 2. Each Lot Owner is responsible for complying with the Grading Plan and for release or retentions of surface water drainage in accordance with said plans and each Owner shall hold harmless the City of Albuquerque and Grantor from any expense, maintenance and liability connected to the aforementioned.

ARTICLE IX

MISCELLANEOUS

Section 1. The Grantor may include restrictions, other than these set out herein, in any contract or deed to any Lots without otherwise modifying the general plan as now set forth, and such other restrictions shall inure to the benefit of and bind the respective parties in the same manner as though they had been expressed herein.

Section 2. The restrictions herein set out shall be referred to, adopted and made a part of each and every contract and deed executed by and on behalf of the Grantors of said Property, and any part thereof, to all such intents and purposes as though incorporated in full thereof; and each such contract

and/or deed shall be conclusively held to have been so executed, delivered and accepted upon the express conditions herein stated.

Section 3. None of the Lots within the Subdivision shall be further subdivided to create two (2) or more building sites, however, two (2) or more Lots may be combined into one (1) building site.

Section 4. Streetwalks providing for pedestrian traffic will be located at the front property line adjacent to City right-of-way or within the City right-of-way.

Section 5. Solar energy collectors shall be allowed only if constructed in such a manner that they are built into the basic lines of the parent structure to create an aesthetically pleasing appearance from adjoining properties and streets and provided further, if they are visible from any street within the subdivision, they must be shielded from view. The screening or covering used must match and blend with the improvement or structure to which it is attached, and must be shown in detail on the plans submitted to the Committee.

ARTICLE X

ENFORCEMENT

Section 1. All provisions of this Declaration shall be binding on all Lots and the Owners, regardless of the source of title of such Owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Committee or Owner of other property shall have notified in

writing the Owner of the Lot upon which such breach has been committed to refrain from a continuance of such action and to correct such breach, shall warrant the Grantor or other Lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief. However, this Declaration shall not be binding on any Owner, except in respect to breaches committed during the time such Owner owns or has an interest in said Lot. If such relief is granted, the court may award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorneys' fees.

Section 2. No delay or omission on the part of the Owner or Owners of Lot or Lots in exercising any right, power, or remedy herein provided for in the event of any breach of any of this Declaration shall be construed as a waiver thereof or acquiescence therein.

Section 3. No right of action shall accrue, nor shall any action be brought or maintained by anyone whomsoever against the Grantor for or on account of the failure or neglect of the Grantor to exercise any right, power, or remedy herein provided for in the event of any breach of this Declaration.

Section 4. In the event that any one or more of the provisions of this Declaration herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions of this Declaration shall continue unimpaired and in full force and effect.

ARTICLE XI

AMENDMENTS

Section 1. This Declaration may be amended from time to time by written amendment executed by Owners owning seventy-five percent (75%) of the Lots, which Amendment shall become effective upon recording with the Bernalillo County Real Estate Records.

Section 2. Notwithstanding Section 1 of this Article, Grantor shall have the authority to unilaterally change, amend or modify this Declaration until Fourplexes have been constructed on all Lots, provided, that such changes, modifications or amendments do not materially change the character and quality of the Lots subject to this Declaration and do not materially increase the number of Lots within the Property and; provided further, that the prior written consent of the Architectural Control Committee has been obtained.

ARTICLE XII

DURATION

This Declaration as amended from time to time shall continue to be binding upon the Grantors, their successors and assigns, the Owners, and their heirs, assigns, personal representatives and all parties claiming by, through or under them, for a period of twenty-five (25) years from the date this instrument is filed for record in the office of the County Clerk of Bernalillo County, New Mexico, and shall automatically be

extended for successive period of fifteen (15) years each; provided, however, that at any time within five (5) years prior to the expiration of the first twenty-five (25) year period, or within five (5) years of the expiration of any fifteen (15) year period thereafter, the Owners of the Property may provide for the release of any and all of the Lots hereby restricted, from any part of this Declaration at the end of the first twenty-five (25) year period or at the end of any successive fifteen (15) year period, by executing and acknowledging a proper agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, which election shall require the same procedures as amendment of this Declaration.

IN WITNESS WHEREOF, Jim Maddox, Inc., has caused this instrument to be executed this 28th day of January, 1987.

JIM MADDOX, INC., a New Mexico corporation

By [Signature]
Jim Maddox, President

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was duly acknowledged this 28 day of January, 1987 by JIM MADDOX, President of JIM MADDOX INC., a New Mexico corporation, on behalf of said corporation.

[Signature]
Notary Public

My Commission Expires:

July 30, 1990

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

1987 FEB -3 PH 4:06

BY 15448A 712-735

GLADYS H. DAVIS
CO. CLERK & RECORDER
JUSM [Signature] DEPUTY

COV14HS.61

C I T Y O F A L B U Q U E R Q U E

ALBUQUERQUE, NEW MEXICO

INTER-OFFICE CORRESPONDENCE

REF. NO.: WPHYD484

February 26, 1991

TO: Robert E. Gurule, Director; Public Works Department

FROM: Bernie J. Montoya, Engineering Asst.; Hydrology Development Section *BJM*

SUBJECT: HIGH STREET APARTMENT ALLEY IMPROVEMENTS - PROJECT NO. 3171 (K-14/D37)

In response to your inquiry of the required alley improvements involving the High Street Apartments, I submit the following:

1. The SAD process is the only mechanism that could be used to pro-rate the cost of the alley improvements. This process would probably take a minimum of two years to implement. Developer must have improvements in place prior to Certificate of Occupancy release. Therefore, this process would not be beneficial to try and implement.
2. I have discussed the issue with Dan Hogan in as far as monies to fund the project. He has advised me that maybe Transportation Planning, John Castillo, might be able to assist if they have any funds available.

Should you need to discuss this matter further, please call me at 768-2650.

BJM/bsj