

DECLARATION OF CONDOMINIUM OWNERSHIP
AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ROCOCO

A CONDOMINIUM RESIDENTIAL ENTERPRISE

Pursuant to the New Mexico
Building Unit Ownership Act
(Sections 47-7-1 to 47-7-28, N.M.S.A. 1978, As Amended)
Northwest corner 14th St. S.W. and Lead Ave. S.W.
Albuquerque, New Mexico

This Declaration is made and submitted, effective as of the date it is filed for record, by D.R. Lusk (hereinafter referred to as "Grantor"),

WITNESSETH THAT:

WHEREAS, the Grantor is the owner in fee simple of certain real estate located in Bernalillo County, New Mexico, hereinafter more particularly described in Article I, and

WHEREAS, there has been constructed on the aforementioned real estate two (2) apartment buildings containing eight (8) apartment units, parking areas, landscaping and other common areas and facilities, which properties are to be commonly known as "Rococo, a Condominium Residential Enterprise", and

WHEREAS, it is the desire and intention of the Grantor to enable the aforementioned real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, all easements, rights, servitudes and privileges belonging or in any wise appertaining thereto, and all chattels intended for use in connection therewith, to be owned by the Grantor, its grantees, successors, assigns, heirs, executors and

administrators under that certain type or method of ownership commonly known as “Condominium”, pursuant to the provisions of the New Mexico Building Unit Ownership Act, as amended from time to time, and

WHEREAS, the Grantor has elected to establish for its benefit and for the mutual benefit of all future owners of the property, or any part thereof, certain easements and rights in, over and upon the aforementioned real estate and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof, and

WHEREAS, the Grantor has elected further to declare that the several grantees, mortgages and other person, acquiring any interest in the property at all times shall enjoy the benefits of, and at all time shall hold their respective interests subject to the rights, easements, privileges and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and to protect the ownership and to facilitate the proper administration of the property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the property.

NOW, THEREFORE, the Grantor declares as follows:

ARTICLE I

SUBMISSION TO NEW MEXICO BUILDING UNITY OWNERSHIP ACT

The Grantor hereby submits property which it owns in fee simple, being the real estate, lands and space located within the City of Albuquerque, in Bernalillo County, New Mexico, being more particularly described as follows:

Lots lettered “D” and “E” of R. H. Berryhill’s replat of the north one hundred seventy-five (175) feet of Block 23, Raynold’s Addition, Albuquerque, New

Mexico, as the same as shown and designated on said replat filed in the office of the County Clerk of Bernalillo County, New Mexico on October 27, 1936.

Subject to patent reservations, easements and restrictions of record and taxes for the year 1979 and thereafter;

Together with the buildings, improvements and structures thereon, and all easements, servitudes, rights and appurtenances belonging thereto, and all chattels intended for use in connection therewith,

to the New Mexico Building Unit Ownership Act, as amended from time to time, and the Grantor hereby 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 New Mexico Building Unit Ownership Act, as amended from time to time, and subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, which shall be deemed to run with the land and shall be a burden and a benefit to Grantor, its successors and assigns and any person acquiring or owning an interest in the property, their grantees, successors, assigns, heirs, executors and administrators.

ARTICLE II

DEFINITIONS

Wherever herein the following terms are used, unless such meanings are clearly inapplicable, they shall have the meanings set forth below:

(a) "Unit" means that space or area (exclusive of the land itself, which is part of the common areas and facilities, but inclusive of all improvements of whatsoever nature except those hereinafter included in the definition of common areas and facilities) intended for residential use contained within, and circumscribed by, the boundary shown for such unit in the Location Plan.

(b) "Unit owner" means 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 specified and established in this Declaration, and including contract sellers (or contract purchasers, if so designated by the contract seller) but does not include those having an interest merely as security for the performance of an obligation.

(c) "Unit number" means the symbol designating the building unit in the Location Plan

(d) "Association" or "Rococo Association" means all of the unit owners acting as a group as a New Mexico nonprofit corporation, in accordance with the Building Unity Ownership Act, this Declaration and the Articles and By-Laws of the Association.

(e) "By-laws" means the By-Laws of Rococo Association governing the actions, conduct and affairs of that Association.

(f) "Building unit" means a unit and the respective undivided interest in the common areas and facilities hereinafter established and allocated to that unit.

(g) "Building" means the structure, or structures, comprising a part of the property, wherein the enclosed portions of the building unit are contained.

(h) "Common area and facilities" means and is described and defined in Article III, paragraph 4.

(i) "Common expenses" means all expenses lawfully assessed against unit owners by the Association, including, but not to the exclusion of other common charges provided for in this Declaration, in the Building Unit Ownership Act and in the By-Laws, the expenses of administration of the Association and the maintenance, operation, insuring, repair or replacement of the common areas and

facilities and the expenses of administering and operating recreation programs for the benefit of the unit owners.

So long as water is furnished by the City of Albuquerque to the Association through one or more master meters, common expenses shall include all water furnished to units for use by the occupants thereof and charges for sewer and garbage service included with the City of Albuquerque water bill. So long as gas and/or electricity is charged to the Association through one or more master meter or meters, common expenses shall also include all gas and/or electricity furnished to units for use by the occupants thereof.

(j) "Common profits" means the balance of income, rents, profits and revenues from the common areas and facilities remaining after the deduction therefrom of common expenses.

(k) "Location Plan" means the floor plan called for in Section 47-7-14 of the Building Unit Ownership Act. The Location Plan is hereby incorporated into the Declaration and made a part hereof.

(l) "Majority" or "majority of unit owners" means the majority of voting unit owners.

(m) "Person" means an individual, corporation, partnership, combination, association, trustee or other legal entity.

(n) "Property" means the land, the building, improvements and structures owned in fee simple absolute which are hereby submitted to the provisions of the Building Unit Ownership Act, and includes all easements, servitudes, rights and appurtenances, belonging thereunto and all chattels intended for use in connection therewith.

ARTICLE III

THE BUILDING, BUILDING UNITS, COMMON AREAS AND FACILITIES AND EASEMENTS

1. Description of Buildings: There are two (2) apartment buildings containing eight apartment units, together with parking areas, landscaping and other common areas and facilities. The buildings are constructed principally of concrete slabs, stucco exterior walls, gypsum board on wood framing interior walls, three-ply built up roofs, stucco, glass, aluminum, sheet metal, tile, carpet and brick.

2. Identification and Description of the Building Units on Location Plan.

Simultaneous with the filing of this Declaration there shall be filed with the Office of the County Clerk of Bernalillo County and become a part hereof a Location Plan showing the layout, location and dimensions of the units, identifying each by its number, and bearing the verified statement of a registered licensed professional engineer certifying that it is an accurate copy of portions of the plans of the buildings as filed with, and approved by , the governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

The exact location of each unit of a building is shown on the said Location Plan.

The first digit in each unit number identifies the building in which the unit is located. The second digit completes the identification the particular unit.

The immediate common area to which each unit has access is the walkways abutting the entrance of each unit and the second floor balcony attached to each unit. The entry to each unit is specifically identified on the Location Plan.

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

(a) The real estate described in Article I (including those portions upon which the units are located) together with the buildings, improvements and structures thereon and all easements, servitudes, rights and appurtenants belonging thereunto, save and except the units themselves, and all chattels intended for use in connections therewith;

(b) All of the buildings or structures including, but not limited to, the footings, foundations, columns, joists, girders, beams, supports, main walls, roofs, sky lights, floors and decking, balconies and patios;

(c) The grounds, yards, gardens, driveways, parking areas, walks and walkways;

(d) The installations of central services, including sewer, power, light, gas, water, heating, water heating, refrigeration, air-conditioning, sewage disposal and incinerating, including, but not limited to pipe, ducts, flues, conduits, wires, hose cabinets and other utility installations;

(e) The elevators, tanks, pipes, pumps, motors, fans, compressors, ducts and all apparatus and installations existing for common use;

(f) Supporting members of interior and exterior walls (excepting non-load bearing walls within a unit);

(g) The surface and surfacing material of the exterior walls of the buildings;

(h) Load bearing walls inside a unit;

(i) The chattels used for the maintenance of the property;

(j) All other parts of the property necessary in common use or convenient to its existence, maintenance and safety;

(k) Common areas does not include the interior surface and surfacing material (paint, wallpaper, carpeting, tiling, etc.) of the walls, floor and ceilings of a unit, nor the windows, glazing, window hardware or fitting of a unit, or door surfaces, door jambs, door trim or door hardware inside a unit.

4. Method of Apportioning Interest in Common Areas and Facilitation and Statement of Value of the Property and of Each Unit:

It is hereby specified that the method by which the interest in the common areas and facilities appertaining to each unit shall be apportioned is the square footage in the unit as a percentage of the square footage in all of the units.

If, and to the extent that, a statement of the value of the property and of each unit may be made mandatory by N.M.S.A. 70-4-6 or 70-4-11 (F), it is hereby declared that the value of the property is \$316,000 and the value of each unit is \$39,500.00. (These expressions of value are not intended to have any effect whatsoever upon the relative rights or obligations of the unit owner and/or the grantor, or otherwise, but are included herein for the sole and limited purpose of complying with said N.M.S.A. 70-4-6 or 70-4-11 (F).

5. Nature of Ownership of Units and Ownership of Common Areas and Facilities.

Each unit owner shall own a unit in fee simple absolute. Each unit owner shall own his individual interest in the common areas and facilities as a tenant in common with all other unit owners, and, except as otherwise limited in this Declaration, shall have the right to use the common areas and facilities for all purposes incident to the use and occupancy of his unit as a residence and such other incidental uses permitted by the Declaration, which right shall be appurtenant to and shall run with each unit.

6. No Severance or Partition of Common Areas and Facilities or of Ownership Thereof: The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the unit even though the interest is not expressly mentioned or described in a conveyance or other instrument.

The common areas and facilities shall remain undivided, and no unit owner or any other person shall bring any action for partition or division, unless the property has been removed from the provisions of the Building Unit Ownership Act as provided in the Act.

No unit may be partitioned or subdivided without the prior written approval of all unit owners and the prior written approval of the holder of any first mortgage on such unit.

ARTICLE IV

ADMINISTRATION OF THE PROPERTY

1. Association of Unit Owners and Board of Directors: The direction and administration of the property shall be vested in an incorporated association of all the unit owners, known as ROCOCO ASSOCIATION, a New Mexico nonprofit corporation. The Association shall elect and act through a Board of Directors (hereinafter referred to as the "Board"), consisting of not less than three (3) persons who shall be elected in the manner set forth in the By-Laws. A person need not be a unit owner to serve on the Board.

2. General Powers and Duties of the Board of Directors: The Board shall have the following general powers and duties and, for the benefit of all the unit owners shall acquire and shall pay for, from the common expense fund herein provided, the following:

(a) Water, sewer, waste removal, gas, electricity and other necessary utility service for the common areas and facilities and for the units so long as such services are furnished to units through one or more master meters.

(b) A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the common areas and facilities; or such fire and casualty insurance as the Board shall determine gives substantially equal or greater protection written in the name of, and the proceeds thereof shall be payable to the Board, as trustees for the unit owners in the percentages established herein as their percentage ownership in the common areas and facilities and to the unit owners' mortgages, if any, as their interest may appear.

(c) A policy or policies insuring the members of the Board, their agents and employees and the unit owners against any liability to the public or to the owners of the units and their invitees or tenants incident to the unit ownership and/or use of the common areas and facilities and units, the liability under which insurance shall be not less than One Hundred Thousand Dollars (\$100,000.00) for any one person injured, Three Hundred Thousand Dollars (\$300,000.00) for any one accident and Ten Thousand Dollars (\$10,000.00) for property damages (such limits to be reviewed at least annually by the Board and increased in its discretion), payable to the Board in trust for the unit owners.

(d) Workmen's Compensation insurance to the extent necessary to comply with any applicable laws.

(e) Such fidelity bond coverage as the Board deems appropriate for any person or entity handling funds of the Association including, but not limited to, employees of any manner.

(f) Landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the common areas and facilities, 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.

(g) 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 or by law for which, in its opinion, shall be necessary or proper for the benefit of all of the unit owners and the administration, maintenance, and operation of the property as a first-class residential building or for the enforcement of this Declaration.

(h) Maintenance and repair of any unit, if such maintenance or repair is necessary in the reasonable discretion of the Board to protect or preserve any other portion of the building, and the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Board to said owner or owners, provided that the Board shall levy a special assessment against such owner for the cost of said maintenance or repair.

Board 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 said unit owners and occupants of said property. Written notice of such rules and regulations shall be given to all unit owners and occupants, and the property shall at all time be maintained subject to such rules and regulations.

The authority of the Association, acting through its Board or otherwise, to regulate the use of the parking areas shall be subject to the requirements that, whenever possible, each building unit shall have the right to the use of such parking areas for at least one car.

The Board may enter into management agreements with any third party, delegating to such third party manager such of its authority and duties as the Board deems fit;

provided that any management agreement shall be terminable by the Board for cause upon 30 days' written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods.

ARTICLE V

ASSESSMENTS AND MAINTENANCE FUND

1. Creation of Common Expense Fund and Obligation for Assessments: The Board shall establish a "common expense fund" for the administration, maintenance, repair, replacement and improvement of the common areas and facilities of the property, for the exercise and performance of its powers and duties, as in this Declaration set forth, for the administration, maintenance and operation of the property as first-class residential housing, for the enforcement of the terms of this Declaration, and for any other common expenses, which fund shall be financed or funded by assessments as hereinafter provided, paid by all unit owners. The fund shall be administered on a fiscal year basis which fiscal year shall end on September 30 of each year.

Each year, on or before August 31, the Board shall estimate the total amount necessary for the coming year's common expense fund together with a reasonable amount considered by the Board to be necessary for a reserve for contingencies and replacements and shall notify each owner in writing as to the amount of such estimate with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the unit owners according to each unit owner's percentage of ownership in the common areas and facilities as set forth herein.

On or before October 1 of each year and the first of each and every month of said year, each unit owner shall be obligated to pay to the Board or as it may direct, one-twelfth (1/12) of the assessments made pursuant to this paragraph.

2. Management of the Common Expense Fund and Collection of the Assessments: The common expense fund and assessments shall be managed and assessments shall be collected in the following manner:

On or before the date of the annual meeting of each year, the Board shall supply to all unit owners an itemized accounting of the common expenses for the preceding year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimate 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 unit owner's percentage of ownership in the common areas and facilities to the next monthly installment due from unit owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each unit owner's percentage of ownership in the common areas and facilities to the installments due in the succeeding two (2) months after rendering of the accounting.

The Board shall build up 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 such reserve. If said "estimate cash requirement" proves inadequate for any reason, including non-payment of any unit owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the unit owners according to each owner's percentage ownership in the common areas and facilities. The Board shall serve notice of such further assessment on all unit owners by a statement in writing, giving the amount and reasons therefore, and such further assessment shall become effective with the monthly maintenance payment which is due not less than ten (10) days after the delivery or mailing of such notice of further agreement. All unit owners shall be obligated to pay the adjusted monthly amount.

The failure or delay of the Board to prepare or serve the annual or adjusted estimate on the unit owner shall not constitute a waiver or release in any manner of such unit

owner's obligation to pay the common expenses, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the unit owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous period until 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 shall be authorized in writing, at such reasonable time or times during the normal business hours as may be requested by the owner. Upon ten (10) day's notice to the Board and payment of a reasonable fee, any unit owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied against less than all the unit owners, and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the unit owners in the same percentages as their percentage ownership of the common areas and facilities specified herein.

3. Special Assessments. In addition to the assessments authorized above, the Board may levy special assessments in any year applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area.

The Board may also levy special assessments against one or more unit owners when authorized elsewhere in this Declaration, and or when the Board determines the expenditures requiring such assessment will inure to the benefit of such unit owner or owners and not to the benefit of the owners as a group, or when the Board determines the expenditures were made necessary by the negligence or willful misconduct of the assessed unit owner or owners.

4. Collection of Assessments – Lien for Assessments. Any assessment which is not paid when due shall be delinquent. If a unit owner is in default in the payment of any assessment for thirty (30) days, the members of the Board may bring suit for an on behalf of themselves and as representatives of all owners to enforce collection thereof or to foreclose the lien therefore as hereinafter provided; and there shall be added to the amount due the costs of said unit, together with interest at the highest rate permitted by law, and reasonable attorney's fees to be fixed by the Court.

All sums, assessed by the association of unite owners but unpaid, for the share of the common expense, or for special assessments chargeable to any unit shall constitute a lien on the unit prior to all other liens except:

- (a) tax liens on the unit in favor of any assessing unit and special district; and
- (b) all sums unpaid on a first mortgage of record.

The lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the unit owners, in like manner as a foreclosure of mortgage or real property. The manager or Board of Directors, acting on behalf of the unit owners shall have power to bid on the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey. Suite to

recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien accruing the same.

Each holder of a first mortgage lien on a unit who comes into possession of the unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the unit free of any claim for unpaid assessments and charges against the unit which accrue prior to the time such holder comes into possession of unit, except for claims for a pro-rata of such assessments or charges resulting from a pro-rata reallocation of such assessments or charges to all units including the mortgaged unit.

In a voluntary conveyance the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses to the time of grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee. However, any grantee shall be entitled to a statement from the Board setting forth the amount of the unpaid assessments against the grantor and the grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

ARTICLE VI

EASEMENTS

Ownership of the property, building units and common areas and facilities shall be subject to the following easements:

1. Encroachments. If, by reason of the manner in which the buildings may have been constructed, or by reason of settlement or shifting, parts of the improvements, such as electric wiring, conduit, walls, water pipe, sewer lines, gas lines, ducts, vents, switches, valves and similar items, designed and installed for the benefit of one building unit, or for the common areas, shall encroach upon another building unit, an easement for that encroachment and for the maintenance, repair and replacement of such part or parts, for so long as that encroachment shall exist, is hereby declared to exist. In the event, that the building(s), or any part thereof, is partially or wholly destroyed, and then rebuilt, and in the rebuilding parts o the improvements, such as electric wiring, conduit, walls, water pipe, sewer lines, gas lines, ducts, vents, switches, valves and similar items designed and installed for the benefit of one building unit, or for the common area, shall encroach upon another building unit, an easement for that encroachment and for the maintenance, repair and replacement of such part or parts shall exist for so long as that encroachment shall exist. Provided, however, that in no event shall a valid easement for any encroachment be created in favor of the unit owner if such encroachment occurred due to the negligent or willful conduct of said unit owner.

2. Access for Purpose of Making Repairs. The Association shall have the irrevocable right, exercisable by the manger or Board of Directors, of access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, and for

making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit

3. Access to Water Heaters. The Association shall have the right, exercisable by the manager or the Board of Directors, of access to each unit at any time to adjust, repair or replace any water heater or connections thereto for so long as any such water heater or connection serves more than one unit.

ARTICLE VII

TAXATION OF UNITS

If, and as long as, permitted by the Building Unit Ownership Act and by the appropriate taxing authorities, each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments.

ARTICLE VIII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The units and common areas and facilities shall be occupied and used as follows:

(a) The units, common areas and facilities shall be used and occupied solely and excessively for the purpose of a single-family residence for the owner, his family, guests and agents as hereinafter provided

(b) There shall be no obstruction of the common areas and facilities nor shall anything be stored in the common areas and facilities without the prior consent of the Board except as hereinafter expressly provided. Each unit owner shall be obligated to maintain and keep in good order and repair his own unit.

(c) Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance thereon without the prior written consent of the Board. No unit owner shall permit anything to be done or kept in his unit in the common areas and facilities which will result in the cancellation of insurance on the common areas.

(d) Unit owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the buildings and no sign, awning, canopy, shutter, radio or television antenna or towers shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Board.

(e) No noxious or offensive activity shall be carried on in any unit or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other unit owners or occupants.

(f) Nothing shall be done in any unit or in, on, or to the common areas and facilities which will impair the structural integrity of the buildings, which would jeopardize the soundness or safety of the buildings, which would structurally change the building, except as is otherwise provided herein, or which would reduce the value of or impair easements, servitude, rights, privileges or hereditaments belonging to or in any wise appertaining to the property.

(g) The common areas and facilities shall be kept free and clear of garbage, rubbish, debris and other unsightly materials.

(h) Nothing shall be altered or constructed or removed from, and no natural or growing materials or substance shall be removed from, the common areas or facilities except upon the written consent of the Board.

(i) No unit shall be developed, improved or used for any business, commercial, professional, or other trade purpose, whether or not for profit.

(j) No animals, livestock or poultry of any kind shall be raised, bred or kept in any unit, except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. The Board may adopt such regulations as it deems reasonable concerning the control of household pets and may require that such pets or any particular pet be leashed and muzzled and may require any unit owner to restrain any pet within that owner's unit.

(k) No unit owner shall allow to continue in his building unit any state of disrepair or deterioration which would jeopardize the soundness or safety of any other unit or which would unreasonably interfere with any other unit owner's use and enjoyment of the latter's unit. No unit owner shall allow his unit to become impregnated with noxious odors or infested with vermin. Should any unit owner become in default in his compliance with the provisions of this paragraph, the Board may declare that an emergency exists, and enter in and upon the defaulting unit owner's unit to correct such default and the defaulting owner shall reimburse the Association for all expenditures incurred by the latter in correcting the default. In the event that an owner shall become indebted to the Association by reason of the provisions of this paragraph, the Association shall have a lien against the unit of the owner so indebted it for the amount of that indebtedness, together with all expenses and costs in connection with the enforcement of the lien.

(l) No unit owner is permitted to lease his unit for transient or hotel purposes. No unit owner may lease less than the entire unit. Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws, and the administrative rules and regulations adopted pursuant thereto, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases are required to be in writing. Other than the foregoing, there is no restriction on the right of any unit owner to lease his unit.

(m) Each unit owner may use the common area and facilities, in accordance with the purpose for which they were intended, without hindering or encroaching upon the lawful rights of the other unit owners, and subject to the Building Unit Ownership Act, these Declarations, the By-Laws, and such rules and regulations as the Association may from time to time adopt or modify.

ARTICLE IX

USE OF INSURANCE PROCEEDS IN EVENT OF FIRE OR CASUALTY: DETERMINATION OF WHETHER TO REBUILD: EFFECT OF CONDEMNATION

1. Insurance: The Board has the powers and duties to obtain insurance on the property in accordance with Article IV, paragraph 2 (b). If the property, or any part thereof, shall be damaged or destroyed by fire or other casualty protection against which insurance is herein required to be procured, the Board shall receive, as trustee for any person having an interest in any insurance indemnity, all proceeds from such insurance and shall apply all such proceeds to the rebuilding, repair and restoration of the property. Provided, however, if the fire or other casualty causes damage which comprises more than two-thirds of the buildings, a decision of the record fee owners of three-fourths (3/4) of the units, evidenced by a writing executed within one hundred twenty days from the date of such casualty, may be made to sell the property in lieu of rebuilding, repairing or restoring the same; in which event any insurance proceeds shall be delivered pro rata to the unit owners and their mortgages or assigns as their interests may appear.

Nothing in this Declaration shall prevent any building unit owner from procuring additional insurance in his own behalf, nor shall this Declaration prejudice any rights or any building unit owner who does procure such additional insurance.

2. Condemnation: In the event of any taking of any unit by eminent domain, the owner of such unit shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgage shall be divested of all interest in the property. The remaining unit owners shall decide by majority vote whether to rebuild or repair the property, or take other action. The remaining portion of the property shall be resurveyed, if necessary, and the

Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining owners in the common areas and facilities. In the event of a taking by eminent domain of more than one unit at the same time, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where units are not valued separately by the condemning authority or by the court. The Association should give careful consideration to the allocation of percentage interests in the common area in determining how to divide lump sum proceeds of condemnation. In the event any unit owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under the rules of the American Arbitration Association.

ARTICLE X

REMEDIES FOR BREACH OF COVENANTS RESTRICTIONS AND REGULATIONS

Each unit owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto and shall comply with the covenants, conditions and restrictions set forth in these Declarations or in the deed to his unit. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or the Board, or maintainable in a proper case by an aggrieved unit owner. In the event such an action is commenced, all expenses, including reasonable attorney's fees, to be in any event not less than two hundred fifty dollars, shall be recovered by the prevailing party.

The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision herein contained, shall give the Board the rights, in addition to the rights otherwise afforded by law and the rights set forth in the proceeding

paragraph: To enter upon the unit or common area upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof.

ARTICLE XI

LIMITATION OF RESTRICTIONS ON GRANTOR

Grantor is undertaking, or may hereafter undertake, certain work in connection with the property and conversion of the existing apartments into building units or condominiums. The completion of that work and the sale, rental, and other disposal of said building units is essential to the establishment and welfare of the property as a residential occurrence. In order that said work may be completed and the property be established as a fully occupied residential community, so long as Grantor, its successors and assigns, owns one or more of the units established and described in this Declaration, nothing in this Declaration shall be understood or construed to, and no action of the Association or the Board shall be effective to:

(a) prevent Grantor, its contractors, or subcontractors from doing on the property or any unit, whatever is reasonably necessary or advisable in connection with the completion of the work; or

(b) prevent Grantor or its representatives from erecting, constructing and maintaining on any part or parts of the property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) prevent Grantor from conduction on any part of the property its business of completing the work and of establishing a plan of unit ownership and of disposing of said property in units by sale, lease or otherwise; or

(d) prevent Grantor from maintaining such sign or signs on any of the property as may be necessary for the sale, lease or disposition thereof.

ARTICLE XII

ADDITIONAL RIGHTS OF INSTITUTIONAL MORTGAGES

In addition to all other rights set forth in this Declaration any institutional holder of a first mortgage shall have the following rights:

1. Any institutional holder of a first mortgage on a unit is, upon request, entitled to:

(a) inspect the books and records of the Association during normal business hours; and

(b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Association; and

(c) written notices of all meetings of the Association and may designate a representative to attend all such meetings.

2. In the event of substantial damage to or destruction of any unit or any part of the common elements, the institutional holder of any first mortgage on a unit is entitled to timely written notice of any such damage or destruction and no provision of this Declaration or of any document establishing the Association entitles the owner of a unit or other party to priority over such institutional holder with respect to the distribution to such unit of any insurance proceeds.

3. If any unit or portion thereof or the common area or facilities, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or any document establishing the

Association entitles the owner of a unit or other party to priority over such institutional holder with respect to the distribution to such unit of the proceeds of any award or settlement.

ARTICLE XIII

METHOD OF AMENDMENT OF DECLARATION

Except as otherwise specifically provided herein or by the Building Unit Ownership Act or by other statute this Declaration may be amended by, and only by, and instrument in writing executed and acknowledged by not less than the record fee owners of seventy five percent (75%) of the building units and filed for record with the office of the County Clerk of Bernalillo County, New Mexico

ARTICLE XIV

AGENT FOR SERVICE OF PROCESS

The agent for service of any notice or process upon the Association shall be

Dick R. Lusk
323 10th NW
Albuquerque, New Mexico

ARTICLE XV

GENERAL PROVISIONS

The following general provisions shall govern the administration and management of the property:

(a) Until such time as the Board of Directors provided for in this Declaration is formed, the Grantor 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 building unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the unit owner or unit owners whose unit ownership is subject to such mortgage or deed of trust.

(c) Notices required to be given to said Board or the Association may be delivered to each member of the Board or officer of the Association either personally or by mail addressed to such member or officer at his building unit.

(d) Notices required to be given any devisee or personal representative of a deceased building unit owner may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased owner is being administered.

(e) Each grantee of the Grantor, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed, 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 said land, and shall inure to the benefit of such unit owner in 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 the same, irrespective of the number of violations or breaches which may occur.

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

(h) 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 or building development.

GRANTOR has executed this instrument as declarant this _____ day of _____, 1979.

Dick R. Lusk, Grantor

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

The foregoing instrument was duly acknowledged before me this _____ day of _____, 1979, by Dick R. Lusk.

Notary Public

BY-LAWS
OF
ROCOCO ASSOCIATION

The affairs of ROCOCO ASSOCIATION, a New Mexico non-profit corporation, shall be administered and regulated by the following By-Laws:

ARTICLE I
NON-PROFIT CORPORATION

The corporation does not and shall not afford pecuniary gain, incidental or otherwise, to its members. The corporation is formed for an object and a purpose not involving pecuniary remuneration, directly or indirectly, of its members; it shall not issue any capital stock; no part of the moneys received by the corporation shall inure to the pecuniary gain of its members, directly or indirectly. The corporation also has such powers as are now or may hereafter be granted by the laws of the State of New Mexico regarding non-profit corporations.

The following rules shall conclusively bind the corporation and all persons acting for or in behalf of it:

- a. The operation of this corporation shall be subject to the easements, rights, restrictions and obligations as contained in the Declaration of Condominium Ownership (hereinafter referred to as the "Declaration"), recorded in the Office of the County Clerk, Bernalillo County, New Mexico, to which Declaration a copy of these By-Laws was attached.
- b. No part of the moneys received by the corporation shall inure to pecuniary gain of any member, either directly or indirectly; provided, however, the corporation may pay reasonable compensation for services rendered by its members.

ARTICLE II

OFFICES

The corporation shall have and continuously maintain a registered office in Albuquerque, New Mexico, and an agent for service of process whose address is identical with the address of such registered office and may have such other offices as the Board of Directors may from time to time determine.

ARTICLE III

MEMBERS

Section 1. Classes of Membership. The Association shall have two (2) classes of voting membership established according to the following provisions:

A. Class A Membership

Class A Membership shall be that held by each Owner of a unit other than Grantor and each Class A Member shall be entitled to one (1) vote for each unit owned. If a unit is owned by more than one (1) person, each such person shall be a Member of the Association, but there shall be no more than one vote for each unit. If, at the time of vote upon any issue, a unit shall have more than one Owner and those Owners cannot agree upon the manner in which that vote will be cast, the vote will be considered as not having been cast, i.e., the Owners of the building unit will be considered as not voting with respect to the issue upon which the vote shall have been called.

B. Class B Membership

Class B Membership shall be that held by Grantor (or his successor) who shall be entitled to three (3) votes for each unit owned by Grantor; provided that Class B Membership shall be converted to Class A Membership and shall forever cease to exist on the occurrence of whichever of the following is first in time:

- a. The total outstanding votes held by Class A Members equal the total outstanding votes (tripled as above) held by the Class B Member; or

b. January 1, 1982.

Section 2. Qualifications of Members. An owner of a building unit in Rococo, as the same is defined in the Declaration, shall be a member of the Association and be entitled to all rights and privileges as set forth in the Article of Incorporation, these By-Laws, the Declaration, and any rules and regulations adopted by the Board of Directors of Association.

Section 3. Termination of Membership. In case any member of the Association ceases to be an owner of a unit in Rococo, the membership of such person shall terminate as of the time such person ceases to be an owner, and the new owner shall automatically become a member therein. In case one of the joint owners shall cease to be such a joint owner, then such person shall cease to be a member, but the remaining joint owner or owners shall continue to be accorded a membership.

Section 4. Membership Lists. The Board of Directors of the Association (hereinafter referred to as the "Board") shall have the duty of preparing or causing to be prepared a list of the members of the Association and shall have the additional duty of amending or revising or causing to be amended or revised such lists as memberships are terminated and/or come into being.

Section 5. Voting Rights. There shall be one person or entity (hereinafter referred to as the "Voting Delegate"), entitled to vote on behalf of each member. Such voting delegate shall be the owner or the delegate of a majority in interest of the group composed of all the owners of a unit unless such owner or group shall designate some or entity to act as proxy on his or their behalf. Any person or entity so designated need not be an owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to

the Board by the owner or by a majority in interest of owners in a group. Any or all of the owners may be present at any meeting of the voting delegates. Any voting delegate may vote or take any other action either in person or by proxy.

ARTICLE IV

MEETINGS OF MEMBERS

Section 1. Annual Meeting. There shall be an annual meeting of the members on the second Saturday of October at Albuquerque, New Mexico, or at such other reasonable place or time (not more than thirty (30) days before or after such date) as may be designated by written notice of the Board delivered to the voting delegates not less than ten (10) days prior to the date fixed for said meeting.

Section 2. Special Meeting. Special meetings of the voting delegates may be called at any time for the purposes of considering matters which, by the terms of the Declaration of Condominium Ownership (hereinafter called "Declaration"), require the approval of all or some of the members, or for any other reasonable purpose. Said meetings shall be called by written notice, authorized by a majority of the Board, or by the voting delegates having at least one-third (1/3) of the total votes and delivered not less than ten (10) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting and the matters to be considered.

Section 3. Notice of Meetings. Notice of meetings required to be given herein may be delivered either personally or by mail to the voting delegates, addressed to each such person at the address given by him to the Board for the purpose of service of such notice, or to the

building unit of the owner with respect to which such voting right appertains if no address has been given to the Board.

Section 4. Quorum. The presence at any meeting of the voting delegates having one-half (1/2) of the total votes, in person or by proxy, shall constitute a quorum. Unless otherwise expressly provided herein, or by the Articles and Declaration, any action may be taken at any meeting of the voting delegates upon the affirmative vote of the voting delegates having a majority of the total votes present at such meeting, in person or by proxy.

ARTICLE V

BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the corporation shall be managed by the Board of Directors. The Board shall have all powers and duties set forth in the Declaration. The Board may, in addition, adopt and amend administrative rules and regulations governing the details of the operation and the use of the common areas and facilities; the Board may set restrictions on and requirements of the use and maintenance of the units and the use of the common areas and facilities, not set forth in the Declaration, which are designed to prevent unreasonable interference with the use of units and of the common areas and facilities by the several unit owners.

Section 2. Number, Tenure, Qualifications, Quorum, Meetings, Compensation, Vacancies and Removal. At each annual meeting, after the expiration of the term of the initial Board of Directors, the voting delegates shall, in person or by proxy, elect a Board of Directors for the forthcoming year, consisting of three (3) persons. The number of Directors may be increased or decreased by an amendment to these By-Laws. A majority of the Board shall

constitute a quorum. Members of the Board shall serve, without compensation, for a term of one (1) year or until their successors are elected. Vacancies in the Board may be filled by majority vote for the remaining members thereof. Except as otherwise provided in the Declaration or these By-Laws, the Board shall act by majority vote of those present at its meetings when a quorum exists, but in no instance shall the Board act unless at least two (2) members are in agreement. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt.

ARTICLE VI

OFFICERS

Section 1. Officers. The officers of the corporation shall be a President, a Vice President, a Treasurer, and a Secretary. The officers shall have the authority to perform the duties prescribed from time to time by the Board of Directors. Any two (2) offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election and Terms of Office. The officers of the Association shall be elected annually by the Board at a regular annual meeting of the Board to be held within thirty (30) days after the annual election of the Board. Each officer shall hold office until his successor shall have been duly elected.

Section 3. Removal. Any officer elected by the Board may be removed the Board whenever, in its judgment, the best interest of the Association would be served thereby.

Section 4. Vacancies. Any vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the corporation. He shall preside at all meetings of the voting delegates and of the Board. He may sign, with the Secretary or Treasurer of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the execution thereof shall be expressly delegates by the Board or by these By-Laws or by statute to some other officer or agent of the Association; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice President. The Vice President shall assume all the duties and obligations of the President in the absence of the President.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for the financial records and all funds and securities of the Association; receive and give receipts for all moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VII of theses By-Laws, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board. If required by the Board, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board shall determine.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the voting delegates and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law;

be custodian of the corporate records and of the seal of the corporation; keep a register of the post office address of each voting delegate which shall be furnished to the Secretary by a building unit owner or group composed of all the owners of a building unit ownership; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board.

ARTICLE VII

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officer so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. Such authority shall be confined to specific instances.

Section 2. Checks and Drafts, Etc. All checks, drafts, other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as from time to time shall be determined by written resolution of the Board.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the corporation any contribution, gift, bequest or devise for the general purpose or for any specific purpose of the Association.

ARTICLE VIII

BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account and shall also keep Minutes of proceedings of its voting members and Board and shall keep at the registered or principal office a record giving the names and addresses of all individuals and groups accorded membership. All books and records of the Association shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times as may be requested by the owner.

ARTICLE IX

FISCAL YEAR

The fiscal year of the Association shall end on the 30th day of September of each year, unless another fiscal year shall be adopted by resolution of the Board.

ARTICLE X

WAIVER OF NOTICE

Whenever any notice whatever is required to be given under the provisions of the laws of the State of New Mexico or under the provisions of the Articles of Incorporation or by the By-Laws of the Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated herein, shall be deemed equivalent to the giving of such notice.

ARTICLE XI

AMENDMENT TO BY-LAWS

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by a majority of the Directors present at any meeting at which a quorum is present, but in no event may such action be taken without the concurrence of at least two (2) Board members. No modification of or amendment to these By-Laws shall be effective unless set forth in an amendment as required by the New Mexico Building Unit Ownership Act.

