

STATE OF New Mexico  
County of Colfax

CONDOMINIUM DECLARATION

FOR

THE LIFT CONDOMINIUMS  
COMPLEX A

This instrument was filed for record  
on this 6 day of Aug  
1981 A.D. at 3:30 o'clock  
1 M, and duly recorded in Book  
100 of Books page 1-61  
By Heidi M. Thompson  
County Clerk  
By Heidi M. Thompson  
Deputy

WHEREAS, the undersigned, hereinafter called "Declarant",  
is the owner of the real property described on Exhibit 1,  
annexed hereto, and

WHEREAS, Declarant desires to establish a condominium  
project under the New Mexico Building Unit Ownership Act and  
Amendments thereto, and

WHEREAS, the improvements (condominium units) will be  
owned as provided hereinafter;

NOW THEREFORE, Declarant does hereby submit and declare  
that the Project shall at all times be owned and held in con-  
dominium ownership under the New Mexico Building Unit Owner-  
ship Act, as amended from time to time, and that the following  
terms, covenants, conditions, easements, restrictions, uses,  
reservations, limitations and obligations shall be deemed to  
run with the land, shall be a burden and a benefit to Declar-  
ant, its successors and assigns, and any person or entity  
acquiring an interest in the real property and improvements.

ARTICLE 1

DEFINITIONS

1.1 "Assessments" are common expenses as defined in  
Article 6 hereof.

1.2 "Association" means The Lift Condominiums Unit  
Owners Association, Complex A, a New Mexico non-profit  
corporation, its successor and assigns.

1.3 "'Building" means the buildings constructed on the  
real property.

1.4 "Condominium Map" means the condominium map bearing  
the name of this condominium filed for record in the office of  
the County Clerk, Colfax County, New Mexico.

1.5 "Condominium Unit" means the unit together with the  
appurtenant undivided interest in and to the general common  
elements assigned to the unit by and under this Declaration  
and as shown on Exhibit 3.

1.6 "County" means County of Colfax, New Mexico.

1.7 "Declarant" means Bailey-Mertz Angel Fire Venture,  
a New Mexico partnership.

1.8 "Common Areas and Facilities" means all of the pro-  
ject, except the portions thereof which are units, and means  
and includes the real property and improvements which are or  
may be necessary or convenient to the support, existence, use,  
occupation, operation, maintenance, repair or safety of a  
building or any unit therein.

Title Services, Inc., hereby certifies this to be a true and  
correct copy of the Condominium Declaration for The Lift Condominiums  
Complex A that was filed in the Colfax County Clerks Office on  
this day as shown on Clerks Stamp above. A. M. H.

1.9 "Limited Common Elements" means those parts of the common areas and facilities which are either limited to and reserved for the exclusive use of an owner of a condominium unit or are limited to and reserved for the common use of more than one but fewer than all of the condominium unit owners.

1.10 "Mortgagee" means any person or entity who is a mortgagee under a mortgage or a beneficiary under a deed of trust or similar security instrument encumbering a condominium unit. "First Mortgagee" means the mortgagee or beneficiary under a deed of trust which is the first and most senior of all mortgages and deeds of trust encumbering a condominium unit.

1.11 "Owner" means a person(s), firm, corporation, partnership, association or other legal entity, or any combination thereof, owning a Unit in fee simple absolute and an individual interest in the fee simple estate of the common areas and facilities.

1.12 "Project" means the real property and all improvements on the real property.

1.13 "Real Property" means the real property located in the County of Colfax, New Mexico, described in Exhibit 1 annexed hereto.

1.14 "Unit" means one individual air space which is contained within the perimeter walls, floors, ceilings, windows and doors of each unit as depicted on the Condominium Floor Plan attached hereto as part of Exhibit 2, together with all fixtures and improvements therein contained, but not including any of the structural components of the building, if any, located within the unit.

1.15 "Common Expenses" includes: (1) all sums lawfully assessed against the Unit Owners by the Association of Unit Owners; (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities; and (3) expenses declared common expenses.

1.16 "Multiple Owner" means an Owner who in conjunction with other Owners owns an undivided interest as a tenant in common in and to a Unit and Common Furnishings, such Ownership being designated by a Unit number followed by a dash and a number, followed by the words "Subject to a Tenancy in Common Agreement." No Unit shall be owned by more than fifty Multiple Owners.

1.17 "Common Furnishings" means the personal property in a Unit, including the furniture, tableware, cooking utensils, appliances, decorative items and bedding, at the time of the acquisition of an interest in a Unit by a Multiple Owner and as thereafter substituted or augmented from time to time.

## ARTICLE 2

### CONDOMINIUM UNITS

2.1 Division into Condominium Units. The improvements are divided into separate fee simple condominium estates (Condominium Units), each such estate having an appurtenant undivided percentage fee simple interest in and to the real property as is set forth in Exhibit 3. Each such estate shall consist of the separately designated Unit and the appurtenant undivided interest in and to the Common Areas and Facilities as set forth in Exhibit 3. Certain Units may have Multiple Owners and the interest of each Multiple Owner in a Condominium Unit shall be set forth in that Unit's tenancy in common agreement, provided, however, that the aggregate of voting rights of all Multiple Owners of a Unit shall not exceed the rights specified for that Unit on Exhibit 3. The number of each unit, its location, approximate area, dimensions, number of rooms and immediate common area to which it has access are set forth on Exhibit 2 attached hereto.

2.2 Physical Description of Condominium Units. The thirty-five (35) Units are one, two and three story and shall be devoted to residential purposes only. Construction of the building shall be frame with sheetrock interior walls and red-wood siding and stucco exterior. Common walls are double studded. Interior ceilings shall be of sheetrock with inlaid radiant heat and the floors shall be carpet laid over wood decking or concrete. All units shall be supplied with electricity, sewer and water. Each Unit shall be heated by an individual heating system and each Unit shall have at least one fireplace and one ceiling fan.

2.3 Limited Common Elements. A portion of the Common Areas and Facilities is reserved for the exclusive use of the individual Owners of the respective Units, and such areas are referred to as "Limited Common Elements". The Limited Common Elements so reserved shall be identified on the Floor Plan attached hereto as Exhibit 2; provided, however, that any court, patio, balcony or deck which is accessible from, associated with and which adjoins a Unit and any other Limited Common Elements shall without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the other Owners of the Common Areas and Facilities except by invitation. All of the Owners of the Condominium Units in this condominium project shall have a non-exclusive right in common with all of the other Owners to the use of sidewalks, pathways and driveways located within the entire condominium project. No reference thereto, whether such Limited Common Elements are exclusive or non-exclusive, need be made in any lease, assignment of lease, sublease, deed, deed of trust, mortgage or other instrument.

#### 2.4 Legal Description of a Condominium Unit.

2.4.1 A contract for the sale of a Unit to an Owner other than a Multiple Owner written before the filing for record of the Floor Plan and Declaration may describe a Condominium Unit by its identifying Unit number followed by the name of this Condominium with further reference to the plat and Declaration to be filed for record.



2.4.2 A contract for the sale of a Unit to a Multiple Owner written before the filing for record of the Floor Plan and Declaration may describe a Condominium Unit by its identifying Unit number followed by a dash and a number and the name of the condominium project and with reference to the plat and Declaration to be filed for record and followed by the words "Subject to a Tenancy in Common Agreement."

2.4.3 After recording the Declaration and the Floor Plan, every contract, deed, or any other legal instrument shall describe the Condominium Unit according to the following description:

Owner: (a) In the case of an Owner other than a Multiple

Description

Condominium Unit \_\_\_\_\_, according to the Floor Plan filed for record in \_\_\_\_\_ and Condominium Declaration for The Lift Condominium, Complex A, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, records of Colfax County, New Mexico, which Plan and Declaration are incorporated herein by reference, together with \_\_\_\_\_ percentage undivided interest in the common area and facilities, which Unit shall be used for residential purposes only and subject to other restrictive covenants set forth in the Declaration.

(b) In the case of a Multiple Owner:

Description

Condominium Unit \_\_\_\_\_ - \_\_\_\_\_, according to the Floor Plan filed for record in \_\_\_\_\_ and Condominium Declaration for The Lift Condominium, Complex A, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, records of Colfax County, New Mexico, which Plan and Declaration are incorporated herein by reference, together with \_\_\_\_\_ percentage undivided interest in the common area and facilities, which Unit shall be used for residential purposes only and subject to other restrictive covenants set forth in the Declaration, subject to a Tenancy in Common Agreement.

Parking space(s), if any are specifically appurtenant to the Condominium Unit, shall be added to the description. In each instance, the identifying Unit designation (and parking space, if any) and the recording data of the Declaration shall be inserted or added as is appropriate.

2.4.4 In the case of an Owner, such description shall include and describe the entire Condominium Unit, and in the case of Multiple Owners, such description shall include and describe an undivided interest in the entire Condominium Unit,

including the appurtenant undivided interest in the Common areas and Facilities, a non-exclusive easement for ingress and egress to and from an Owner's Unit, exclusive use of any Limited Common Elements, and all of the other rights, easements, obligations, limitations, covenants and restrictions as provided in this Declaration.

2.4.5 A Condominium Unit may be held and owned in any real property tenancy relationship recognized by the laws of New Mexico.

2.5 Inseparability of a Condominium Unit.

(a) Each Unit, the appurtenant undivided interest in the Common Areas and Facilities and any appurtenant Limited Common Elements shall together comprise one Condominium Unit, shall be inseparable and may be conveyed, leased, devised, or encumbered only as a Condominium Unit.

(b) A designated Condominium Unit identified by a number followed by a dash, a letter and a number, and its undivided interest in the Common Areas and Facilities and any appurtenant Limited Common Elements shall together comprise an interest as a Multiple Owner in a Condominium Unit, shall be inseparable and may be conveyed, leased, devised or encumbered only as such an undivided interest.

2.6 Non-Partitionability of Common Areas and Facilities. The Common Areas and Facilities shall be owned in common and shall remain undivided, and no right of action for partition or division of the Common Areas and Facilities shall or does exist.

2.7 Easements for Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities, or a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a building, by error in the Condominium Floor Plan, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the project or any part thereof.

2.8 Separate Taxation of Condominium Units. All taxes, assessments and other charges of the State of New Mexico or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately and not on a building or the project as a whole, and each Condominium Unit shall be carried on the tax records as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Common Areas and Facilities, shall be apportioned among the Condominium Units in proportion to the fractional or percentage undivided

interests in the Common Areas and Facilities, including the real property appurtenant to and part of such Condominium Units. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

### ARTICLE 3

#### RIGHTS, EASEMENTS AND OBLIGATIONS

3.1 Owner's Rights in Common Areas and Facilities. Subject to the other provisions of the Declaration, each Owner and Multiple Owner shall have a non-exclusive right to use and enjoy the Common Areas and Facilities, consistent with the rights of use and enjoyment of other Owners.

3.2 Owner's Rights in Limited Common Elements. Subject to the other provisions of the Declaration, each Owner and Multiple Owner shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on the Floor Plan as appurtenant to the Condominium Unit owned by such Owner.

3.3 Owner's Rights in Unit. Subject to the other provisions of this Declaration, each Owner shall have full and complete dominion of his Unit, and each Owner shall have the exclusive right to use and enjoy the same. The rights in a Unit owned by Multiple Owners shall be set forth in the Tenancy in Common Agreement.

#### 3.4 Owner's Maintenance Responsibility for His Unit.

3.4.1 For maintenance purposes, an Owner, other than a Multiple Owner, shall be obligated to keep in good repair and condition the non-supporting walls within his Unit, the materials such as, but not limited to, plaster, gypsum dry-wall, paneling, wallpaper, paint, wall and floor tile and flooring, but not including the sub-flooring, which make up the finished surfaces of the perimeter and interior walls, ceilings and floors within his Unit, including Unit doors and windows. The lines, pipes, wires, conduits or systems (herein referred to as utilities) running through his Unit which serve one or more other Units are Common Areas and Facilities. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Declarant and the Board of Directors of the Association. An Owner's right to repair, alter and remodel the interior of his Unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality.

3.4.2 An Owner other than a Multiple Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in good repair and condition by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness



or integrity of the Unit or the building in which it is located or impair any easement or hereditament. An Owner shall always keep the Limited Common Elements appurtenant to his Unit in a clean and sanitary condition.

3.4.3 All expenses for maintenance, repair, alteration or remodeling of a Unit as hereinabove set forth in this Article III, shall be paid by the Owner of a Unit. Any such expense incurred with respect to Limited Common Elements whose use is shared by other Units shall be paid equally by the Owners of such Units.

3.4.4 A Multiple Owner shall make no improvements, decorations or repairs to his Unit or to the Common Furnishings or contract so to do, or subject the Unit or Common Furnishings to any liens, for any such improvements, decorations or repairs.

3.4.5 If any portion of a Unit owned by Multiple Owners requires any maintenance, repair or replacement, then such maintenance, repair or replacement shall be accomplished by the Board of Directors of the Association or its designated Managing Agent and the cost thereof shall be borne by the Multiple Owners of such Unit in the same proportions as their Ownership interest in such Units as set forth in Exhibit 3.

3.4.6 In the event of any damage, destruction, or obsolescence to the Common Furnishings or the need to repair or replace them, the Board of Directors, or its designated agent, shall forthwith cause the Common Furnishings to be repaired or replaced, applying any insurance proceeds toward the cost thereof. If the cost of such repair or replacement exceeds the amount of the insurance proceeds, the Association shall assess each Multiple Owner his proportionate share of the additional amount as a Unit common expense, as set forth in Exhibit 3; provided however, if the damage or destruction is caused by the intentional or negligent act or omission of any Multiple Owner, his family, guests, invitees or lessees, the cost of such repair or replacement shall be borne solely by such Multiple Owner and the Association shall assess such amount to such Multiple Owner.

3.5 Association Rights. The Association shall have a non-exclusive right and easement to make such use of Common Areas and Facilities, Limited Common Elements and Units as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

3.6 Easement for Access, Support and Utilities. Each Owner or Multiple Owner shall have a non-exclusive easement for access between his Unit and public roads and streets, over halls, corridors, stairs, walks, if any, and exterior access and other easements which are part of the Common Areas and Facilities. Each Owner or Multiple Owner shall have a non-exclusive easement in and over Common Areas and Facilities, including those that are within the Unit of another Owner, or Multiple Owner, for horizontal and lateral support of the Unit which is part of his condominium Unit for utility service to that Unit, including water, sewer, gas, electricity, telephone and television service.

3.7 Easements in Units for Repair, Maintenance and Emergencies.

3.7.1 Some of the Common Areas and Facilities may be located within a Unit or may be conveniently accessible only through a Unit. The Association and each Owner and Multiple Owner shall have an easement, which may be exercised for any Owner or Multiple Owner by the Association as his agent, for access through each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities located therein or accessible therefrom; provided, however, that such easement and right of access shall be immediate for making emergency repairs therein necessary to prevent damage to the Common Areas and Facilities or to another Unit.

3.7.2 Any damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Areas and Facilities or as a result of emergency repairs within another Unit shall be a common expense of all of the Owners and Multiple Owners; provided, however, that if such damage is caused by negligent or tortious act of a Unit Owner or Multiple Owner, members of his family, his agent, employees, invitee, licensee or tenant, then such Unit Owner or Multiple Owner shall be responsible and liable for all of such damage. All damaged improvements shall be restored substantially to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements of the Common Areas and Facilities, whether located inside or outside of Units (unless necessitated by the negligence, misuse or tortious act of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be the common expense of all of the Owners and Multiple Owners.

3.8 Partition of a Condominium Unit Prohibited. No Owner or Multiple Owner shall partition or subdivide any Condominium Unit, the Common Areas and Facilities, or the Limited Common Elements. This provision is not intended, however, to prohibit joint or common ownership by two or more persons or entities of a Condominium Unit, nor to prohibit or restrict the use of the Unit by Multiple Owners in accordance with a Tenancy in Common Agreement.

3.9 Easements Deemed Appurtenant. The easements and rights herein created shall be appurtenant to the Condominium Unit and any transfer, assignment, lease, mortgage or deed of trust and other instruments affecting the title to a Condominium Unit shall be deemed to grant and reserve the easements and rights as are provided for herein, even though no specific reference to such easements appears in any such instrument.



## ARTICLE 4

### THE ASSOCIATION

4.1 General Purposes and Powers. The Lift Condominium Unit Owners Association, Complex A, has been formed and incorporated as a New Mexico corporation not-for-profit to be and constitute the Association to which reference is made in this Declaration, to perform functions and hold and manage the Common Areas and Facilities as provided in this Declaration and to further the interests of Owners and Multiple Owners of Condominium Units in the project. It shall have all powers necessary or desirable to effectuate such purposes.

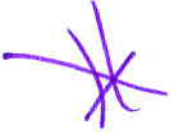
4.2 Regular Membership. There shall be one membership in the Association for each Condominium Unit, which membership shall be appurtenant to each Condominium Unit. The Owner of a Condominium Unit shall automatically be the Owner of the membership appurtenant to that Condominium Unit, and title to and ownership of the membership for that Condominium Unit shall automatically pass with each transfer of a Condominium Unit. Each Owner of a Condominium Unit shall automatically be entitled to the benefits of and subject to the burdens relating to the membership for his Condominium Unit. If the interest in a Condominium Unit is held by Multiple Owners, the membership appurtenant to that Condominium Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as the interest in the Condominium Unit is held.

4.3 Board of Directors. The affairs of the Association shall be managed by the Board of Directors which may by resolution delegate any portion of its authority to an executive committee, or to an executive manager or director for the Association. Members of the Board of Directors shall be elected annually by Owners and Multiple Owners. There shall be three members of the Board of Directors, all of whom shall be Owners or Multiple Owners of Condominium Units elected by Owners and Multiple Owners of Condominium Units.

Notwithstanding anything to the contrary provided herein, until eighty-five percent (85%) of the total number of Condominium Units in this project have been sold by the Declarant, the members of the Board of Directors shall be appointed by Declarant and need not be Owners of Condominium Units.

In addition, should the Association contract at any time with any person or entity to manage the Condominium Units, that person, or the designated agent of the entity, as the case may be, shall be an ex officio member of the Board during the term of such contract.

4.4 Voting of Owners. Each Owner and Multiple Owner shall be entitled to cast votes based on the appurtenant percentage undivided interest in the Common Areas and Facilities assigned to his Unit. Voting by proxy shall be permitted.



4.5 Notices. Except as a greater period is specified in this Declaration, each Owner and Multiple Owner shall be entitled to at least fifteen (15) days' notice of any meeting at which such Owner or Multiple Owner has the right to vote. Notices of meetings shall be in writing and shall state the date, time and place of the meeting and shall indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Any notice shall be deemed given and any information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail or at a telegraph office, postage or charges prepaid, addressed to the party. Any notice, information or material shall be deemed properly addressed to an Owner or Multiple Owner if it is addressed to the name and address shown on the Association's registered address form to be completed by such Owner or Multiple Owner and furnished to the Association or, if the name and address is not so furnished, if it is addressed "To the Owner" at the address of the Condominium Unit of such Owner or Multiple Owner.

4.6 Record Date. The Board of Directors of the Association shall have the power to fix in advance a date as a record date for the purpose of determining Owners entitled to notice of or to vote at any meeting or to be furnished with any budget or other information or material, or in order to make a determination of Owners for any purpose. The Owners or Multiple Owners existing on any such record date shall be deemed the Owners for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of Owners is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which the notice of such meeting is first given to any Owner shall be deemed the record date for the meeting.

4.7 Quorums. Fifty-one percent (51%) of the votes entitled to vote on any matter present, in person or by proxy, at a meeting to consider a matter, or actually voting on the matter shall constitute a quorum for consideration of that matter. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4.5, and the required quorum at any such subsequent meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If a quorum is established for consideration of a matter, except as a greater percentage of votes is required under a specific provision of this Declaration, a majority of the votes ~~cast on the~~ matter or, in the case of elections in which there are more than two candidates, a plurality of votes cast, shall decide the matter.

4.8 Articles of Incorporation and By-Laws. The purposes and powers of the Association and the rights and obligations with respect to Owners or memberships set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and By-Laws of the Association, including any reasonable provisions with respect to corporate matters, but no such provisions shall be, at any time, inconsistent with any provision of this Declaration. By-Laws of the Association are attached hereto as Exhibit 4 and incorporated herein by reference.

## ARTICLE 5

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND PROHIBITION

5.1 Association as Attorney-in-Fact for Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Owners and Multiple Owners of all Condominium Units and each of them to manage, control and deal with the interest of such Owner or Multiple Owner so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the project upon its destruction as hereinafter provided, and to deal with and handle insurance and insurance proceeds as hereinafter provided. The acceptance by any person or entity of any interest in any Condominium Unit shall constitute an appointment of the Association as an attorney-in-fact as provided above.

5.2 Common Areas and Facilities Maintenance. The Association shall provide for the care, operation, management, maintenance, repair and replacement of the Common Areas and Facilities. Without limiting the generality of the foregoing, said obligations shall include the keeping of such Common Areas and Facilities in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such Common Areas and Facilities which might impair access to the project or to the Unit; keeping the project safe, attractive and desirable; and making necessary or desirable alterations, additions, betterments or improvements to or on the Common Areas and Facilities. In addition, the Association shall provide for the care, maintenance, repair and replacement of roadways which are not a part of the Real Property, but which provide access to the Real Property.

5.3 Other Association Functions. The Association may undertake any activity, function or service for the benefit or to further the interests of all, some or any Owners of Condominium Units on a self-supporting, special assessment or common assessment basis. Such activities, functions or services may include the providing on its own or to contract with third persons for police or similar security services, garbage and trash collection services, maid and cleaning service for individual Condominium Units, check-in, mail and telephone answering service, and gas and electrical service, water, sewage disposal and other common services.

5.4 Labor and Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the project or the enforcement of this Declaration.

5.5 Association Right to Acquire Property. The Association may acquire and hold, for use and benefit of the Owners and Multiple Owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules and regulations of the Association, each Owner and Multiple Owner and their guests may use such property. Upon a termination of condominium ownership of the



project and dissolution of the Association, the beneficial interest in any such property shall be deemed to be owned by the then Owners in the same proportion as their respective interests in the Common Areas and Facilities. An assignment of a Condominium Unit shall transfer to the assignee ownership of the assignor's beneficial interest in such property without the necessity of any specific reference thereto. The transfer of a Condominium Unit under foreclosure shall entitle the purchaser to the beneficial interest in such property.

Specifically included herein is the right to obtain necessary easements for the construction, maintenance and operation by the Association of a water or other utility system.

5.6 Sale, Lease or Rental by Association. The Association shall have the right and authority to engage in the sale, lease or rental of a Condominium Unit or any part thereof.

5.7 Rules and Regulations. The Association may make and enforce reasonable and uniformly applied rules and regulations governing the use of Units and of the Common Areas and Facilities. Such rules and regulations may without limitation: (i) regulate use of the Common Elements to assure equitable use and enjoyment by all persons entitled thereto; (ii) require that draperies, shades or other window coverings shall present a uniform and attractive appearance from the exterior of a building; and (iii) assign particular portions of parking areas (spaces) or storage areas or other facilities within the Common Areas and Facilities for exclusive use by Owners of particular Condominium Units.

The Association may suspend any Owner or Multiple Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner or Multiple Owner under this Declaration. The Association may also take judicial action against any such Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for noncompliance, all to the extent permitted by law.

5.8 Implied Rights. The Association shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

5.9 Rights of Mortgagee. Nothing contained in this Article 5 shall preclude or in any manner limit the right of a mortgagee of a Condominium Unit ~~from making the repairs or improvements~~ in accordance with the applicable provisions of the Condominium Declaration or its mortgage.

## ARTICLE 6

### ASSESSMENTS

6.1 Regular Assessments. Each Owner and Multiple Owner shall be obligated to pay and shall pay to the Association amounts assessed to the Condominium Unit of such Owner, which amounts are herein called assessments. The apportionment of assessments shall be made as provided in Article 6.3.

Subject to the provisions hereof, the Board of Directors of the Association shall have the power and authority to determine all matters in connection with assessments, including power and authority to determine where, when and how assessments should be paid to the Association, and each Owner and Multiple Owner shall be required to comply with any such determinations.

6.2 Special Assessments for Capital Improvements. In addition to the regular assessments, the Association may levy special assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of the project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration.

6.3 Apportionment of Assessments. Assessments shall be apportioned according to the appurtenant percentage undivided interest in the Common Areas and Facilities assigned to a Unit as set forth on Exhibit 2. If Ownership of a Condominium Unit, title to which is derived from Declarant, commences on a day other than the first day of an assessment, the Declarant may pay the assessment until the commencement of the next following assessment period or the same may be prorated.

6.4 Determination of Budgets and Assessments. The total amount required to be raised by assessments shall be determined for each fiscal year of the Association by the Board of Directors of the Association. To determine the total amount required to be raised, the Board of Directors shall prepare an annual budget for the fiscal year showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses which will be payable, any estimated income and other funds which will be received, and the estimated total amount required to be raised by assessments to cover costs and expenses and to provide a reasonable reserve. The Board of Directors shall furnish a copy of the budget to any Owner or Multiple Owner upon request.

The total amount required to be raised by assessments for any fiscal year shall be that amount **necessary** to cover the costs and expenses of fulfilling the obligations of the Association made in connection with or contemplated under any previously approved budget. The total amount required to be raised by assessments for any fiscal period less than a full fiscal year shall be the total amount required to be raised for the fiscal year determined as above and multiplied by a fraction, the numerator of which is the number of days in the fiscal period and the denominator of which is the number of days in that fiscal year. Any deficit, occurring or anticipated, shall be the subject of a special assessment.

Except as emergencies may require, the Association shall make no commitment or expenditure in excess of the funds reasonably expected to be available to the Association.

6.5 Time for Payments. The amount of any assessment, or other amount payable with respect to any Owner or Multiple Owner, shall become due and payable with respect to any Owner or Multiple Owner twenty (20) days after notice of such amount shall have been given by the Association to such Owner or Multiple Owner, or at such later time as may be specified by the Association. Any such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due and payable.

6.6 Lien for Assessments and Other Amounts. The Association shall have lien against each Condominium Unit and against each Owner and Multiple Owner's interest in the Unit to secure payment of any assessment or other amount due and owing to the Association with respect to the Owner or Multiple Owners of that Condominium Unit.

6.6.1 To evidence such lien, the Board of Directors or the managing agent, if any, shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of the accrued interest thereon, the name of the Owner or Multiple Owners of the Condominium Unit, and the description of the Condominium Unit. Such a notice of lien shall be signed by one of the Board of Directors or by one of the officers of the Association, or by the managing agent on behalf of the Association, and shall be recorded in the office of the County Clerk. Such lien shall attach and be effective from the actual due date of the assessment until all sums, with interest and other charges thereon, shall have been fully paid.

6.6.2 Such lien may be enforced by the foreclosure of the defaulting Owner's Condominium Unit by the Association in like manner as a mortgage on real property. In any such proceedings, the Owner shall be required to pay the costs, expenses and attorney's fees incurred for filing the lien, all additional costs, all expenses and reasonable attorney's fees incurred. The Owner of the Condominium Unit being foreclosed shall be required to pay to the Association the monthly common assessment for the Condominium Unit during the period of foreclosure, and the Association shall be entitled to a receiver during foreclosure. The Association shall have the power to bid on the Condominium Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant thereto, assign the leasehold or otherwise deal with the same.

6.6.3 The recorded lien provided for herein may be released by recording a Release of Lien to be signed by an officer of the Association or by the Managing Agent on behalf of the Association.

6.7 Liability of Owners, Purchasers and Encumbrances.

6.7.1 The amount of any assessment payable with respect to any Owner or Multiple Owner shall be a joint and several obligation to the Association of such Owner and such Owner's heirs, personal representatives, successors and assigns. A



party acquiring an interest in the Condominium Unit or an interest as a lessee shall be jointly and severally liable with the former Owner or lessor for all such amounts which had accrued and were payable at the time of the acquisition of such interest by such party without prejudice to such party's right to recover any of said amounts paid from the former Owner. Each such amount, together with interest thereon, may be recovered by suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

6.7.2 The holder of a first mortgage or first deed of trust on a Condominium Unit shall not be liable for any such assessment, charge, fine or penalty; and the lien for any such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on a Condominium Unit taken in good faith and for value and perfected by recording in the office of the County Clerk before the time a notice of such lien is recorded in said office. Any mortgagee holding a lien on a Condominium Unit may pay, but shall not be required to pay, any unpaid common assessment payable with respect to such Unit, and upon such payment, such encumbrancer shall have a lien on such Unit for the amount paid of the same rank as the lien of his mortgage or encumbrance without the necessity of having to record a notice of claim of such lien. Upon request of the mortgagee, the Association shall report to the mortgagee of a Condominium Unit any unpaid common assessment or other charges remaining unpaid for longer than thirty (30) days after the same is due; provided, however, that a mortgagee shall have furnished to the Association written notice of such encumbrance.

6.8 Estoppel Certificate. Upon payment of a reasonable fee not to exceed \$50.00 and upon written request of any Owner or any person with any right, title and interest in a Condominium Unit or person intending to acquire any right, title or interest in a Condominium Unit (in which case the fee shall be paid by such prospective purchaser), the Association shall furnish a written statement setting forth the amount of any assessments, charges, fines or penalties, if any, due or accrued and then unpaid with respect to the Owner the Condominium Unit and the amount of the assessments for the current fiscal period of the Association payable with respect to the Condominium Unit, which statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid.

6.9 General. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owner from his obligation to pay the common expenses.

## ARTICLE 7

### USE AND OTHER RESTRICTIONS

7.1 Restrictions on Use. "Residential Units" shall mean all Condominium Units. A residential Unit shall be used for residential purposes only, and no residential Unit shall be

occupied for living or sleeping purposes by more persons than it was designed to accomodate safely. No residential Unit shall be used at any time for any business or commercial activity, except that the Owner thereof may lease or rent such residential Unit for private residential, living or sleeping purposes.

7.1.1 Managers Unit. Notwithstanding the provisions of § 7.1 hereof, one unit may be used by the designee of Declarant as an office for the conduct of sales activity relating to properties of Declarant. Should the designee of Declarant also be the manager designated by the Association, then the said unit may also be used for the discharge of all management functions. Should Declarant give written notice to the Association that it waives the right to maintain a sales office in the project, then one unit may be used by the project manager designated by the Association.

7.2 Common Elements Restrictions. All use and occupancy of Common Areas and Facilities shall be subject to and governed by rules and regulations of the Association. No Owner and no Owner's guest shall obstruct, damage or commit waste to any of the Common Areas and Facilities. No Owner and no Owner's guests shall change, alter or repair or store anything in or on any of the Limited Common Elements or Common Areas and Facilities without the prior written consent of the Association.

7.3 No Imperiling of Insurance. No Owner and no Owner's guests shall do anything or cause anything to be kept in or on the project which might result in an increase in the insurance premiums of insurance obtained for the project or which might cause cancellation of such insurance without the prior written consent of the Association.

7.4 No Violation of Law. No Owner and no Owner's guests shall do anything in or on the project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

7.5 No Noxious, Offensive, Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the project nor shall anything be done or placed on or in any part of the project which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the project and no improvements shall be made or constructed on any part of the project which are or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the project which is unreasonably loud or annoying. No odor shall be emitted on any part of the project which is noxious or offensive to others. No light shall be emitted from any part of the project which is unreasonably bright or causes unreasonable glare. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article 7.5 shall be made by the Board of Directors of the Association and shall be final.

7.6 No Unsightliness. No unsightliness shall be permitted on or in any part of the project. Without limiting the generality of the foregoing, nothing shall be kept or stored

on or in any of the Common Areas and Facilities nothing shall be hung or placed upon any of the Limited Common Elements or Common Areas and Facilities, and nothing shall be placed on or in windows or doors of Units which would or might create an unsightly appearance. Determinations with respect to whether or not a particular activity or occurrence is unsightly shall be made by the Board of Directors of the Association and shall be final.

7.7 Restriction on Animals. No animals, birds or reptiles or insects shall be kept on any part of the project without the prior written consent of the Association.

7.8 Restriction on Signs. No signs or advertising devices of any nature shall be erected or maintained on any part of the project without the prior written consent of the Association. The Association shall permit the placing of at least one sign of reasonable size and dignified form to identify the project.

7.9 No Violation of Rules. No Owner and no Owner's guests shall violate the rules and regulations adopted from time to time by the Association, whether relating to the use of Condominium Units, the use of Common Areas and Facilities or Limited Common Elements or otherwise. Determinations with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article 7.10 shall be made by the Board of Directors of the Association and shall be final.

7.10 Owner Caused Damage. If, due to the act or neglect of an Owner or such Owner's guests, loss or damage shall be caused to any person or property, including the project or any Unit therein, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of such loss or damage may be collected by the Association from such Owner as a special assessment against such Owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the Condominium Unit of such Owner as provided in Article 6 of this Declaration for assessments or other charges.

7.11 Reservation. Notwithstanding any provision to the contrary contained in this Declaration, Declarant, its agents, employees and contractors may maintain during the period of construction and sale, such facilities and activities as reasonably required, convenient or incidental thereto, including but without limitation, a business office, storage area, construction yards, signs, model units, **sales** office, parking areas and lighting.

7.12 External Antennae. No radio or television antenna shall be placed on the exterior of any building, or upon any other part of the common areas and facilities by any unit owner. Declarant or the Association may, however, place antennae on the common areas and facilities for the communal use of unit owners. Maintenance of any antennae so erected shall be a common expense.



ARTICLE 8

INSURANCE

8.1 Insurance Requirements Generally. The Association shall obtain and maintain in full force and effect at all times certain casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized to do business in the State of New Mexico with a rating in Best's Insurance Guide (or any comparable publication) of at least A-AAAA (or any comparable rating). All such insurance, to the extent possible, shall name the Association as the insured, in its individual capacity and also either as attorney-in-fact or trustee for all Owners.

To the extent possible, such casualty insurance shall:

(a) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents and against each Owner and each Owner's employees, agents and guests;

(b) provide that the insurance cannot be cancelled, invalidated, or suspended on account of the conduct of the Association, its officers, directors, employees and agents or of any Owner or such Owner's employees, agents or guests;

(c) provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee;

(d) contain a standard mortgage clause endorsement in favor of the mortgagee of any Condominium Unit or part of the project except a mortgagee of a Condominium Unit or part of the project who is covered by other and separate insurance;

(e) provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least fifteen (15) days' prior written notice to the Association and to each Owner, to each mortgagee covered by any standard mortgage clause endorsement; and

To the extent possible, such public liability and property damage insurance shall provide for coverage of any cross liability claims of Owners against the Association or other Owners and of the Association against Owners without right of subrogation. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice.

Certificates of insurance coverage or copies of insurance policies shall be issued to each Owner and Multiple Owner, each mortgagee and Declarant.

The cost and expense of all insurance obtained by the Association, except insurance covering additions, alterations or improvements made to a Condominium Unit by an Owner or other insurance obtained at the request of and specifically benefiting any particular Owner, shall be a common expense to be covered by assessments against each Owner and his Condominium Unit according to the undivided interest in the Common Areas and Facilities appurtenant to his Unit.

8.2 Casualty Insurance. The Association shall obtain and maintain casualty insurance covering the project and each Condominium Unit covering damage by fire and such other hazards as are covered under standard extended coverage policies, including vandalism and malicious mischief and, if available and if deemed appropriate by the Association, war risk, for the full insurable replacement cost of the project. At the option of the Association, such insurance may also cover additions, alterations or improvements to a Condominium Unit made by an Owner if the Owner reimburses the Association for any additional premiums attributable to such coverage. The Association shall not be obligated to apply any insurance proceeds to restore a Condominium Unit to a condition better than the conditions existing prior to the making of additions, alterations or improvements by an Owner in the absence of insurance covering such additions, alterations or improvements as aforesaid. The limits and coverage of said insurance shall be reviewed at least annually by the Board of Directors and shall include an appraisal of the property in a form satisfactory to the Board of Directors.

8.3 Public Liability and Property Damage Insurance. The Association shall obtain and maintain comprehensive public liability and property damage insurance covering personal liability, property damage liability and automobile personal and property damage liability of the Association, its officers, directors, employees and agents and of each Owner and each Owner's employees, agents and guests arising in connection with ownership, operation, maintenance, occupancy or use of the project or of any Condominium Unit in the project, with limits of not less than \$1,000,000.00 for each person and not less than \$3,000,000.00 for each occurrence with respect to personal liability and with limits of not less than \$500,000.00 for each accident with respect to property damage liability. In the alternative, the Association may obtain such a policy with a single limit of \$1,000,000.00, personal injury and property damage combined.

8.4 Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain Workmen's Compensation and employer's liability insurance as may be necessary to comply with applicable laws.

8.5 Insurance by Owners. Except to the extent coverage therefor may be obtained by the Association and be satisfactory to an Owner, each Owner shall be responsible for obtaining insurance he deems desirable, including insurance covering his furnishings and personal property and covering personal liability of him and his employees, agents and guests. Any insurance policy obtained by an Owner shall be such that it will not diminish or adversely affect or invalidate any insurance or insurance recovery under **policies carried** by the Association and shall, to the extent possible, contain a waiver of the rights of subrogation by the insurer as to any claim against the Association, its officers, directors, agents and employees and against other Owners and their employees, agents and guests.

8.6 Receipt and Application of Insurance Proceeds. Except as some particular person shall have a legal right to receive insurance proceeds directly, all insurance proceeds

and recoveries shall be paid to and received by the Association. All insurance proceeds or recoveries received by the Association shall be applied by the Association as follows: first as expressly provided elsewhere in this Declaration; second to the Owners or persons who the Association may determine, if any, to Owners in proportion to their respective interests in the Common Areas and Facilities.

8.7 Other Insurance by the Association. The Association shall also have the power or authority to obtain and maintain other and additional insurance coverage, including casualty insurance covering personal property of the Association, fidelity bonds or insurance covering employees and agents of the Association and insurance indemnifying officers, directors, employees and agents of the Association.

8.8 Improvements to Condominium Units. Each Unit Owner shall be required to notify the Board of Directors, and shall be liable for any increased insurance premium for insurance maintained by the Board of Directors occasioned by, all improvements made by the Unit Owner to his Unit, the value of which is in excess of one thousand dollars (\$1,000.00). Each Unit Owner shall bear the risk of loss of all improvements made to his Unit that were not the subject of notice to the Board of Directors.

## ARTICLE 9

### DAMAGE, DESTRUCTION AND RESTORATION

9.1 Association Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact, to deal with the project improvements upon its destruction or damage, to repair and improve the Condominium Units, buildings and Limited Common Elements and Common Areas and Facilities. All of the Owners and Multiple Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with the condominium property upon its damage or destruction as is hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers or agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, assignment or any other instrument with respect to the interest of a Condominium Unit Owner which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subsections means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the Limited Common Elements and Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before. The insurance proceeds collected shall be available to the Association for the purpose of repair, restoration, reconstruction and replacement unless the Owners, the Association on behalf of Multiple Owners, Declarant and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

### 9.2 Restoration of the Project.



9.2.1 Insurance Proceeds Sufficient. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to restore the improvement(s), shall be applied forthwith by the Association, as shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvement(s). Assessments for common expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

9.2.2 Insurance Proceeds Insufficient - Assessment. In the event that the property or improvements thereon so damaged are not insured against the risk causing the loss or damage, or in the event that the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction, then the Owners, and Multiple Owners, at a special meeting called for such purpose, shall vote on the proposition of whether or not to rebuild, repair, restore or sell the property. At the vote taken on the foregoing propositions, the Condominium Unit Owners may appoint their first mortgagees, if any, as their proxy to vote on said propositions, or as a part of the first mortgage instrument may grant the first mortgagee the irrevocable power to vote on said proposition in the place and stead of the Unit Owners. If the Unit Owners, by affirmative vote of at least two-thirds of the total vote, vote to repair, rebuild and restore the Condominium Unit, such damage or destruction shall be promptly repaired and restored by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units. Such deficiency assessment shall be a common expense and shall be based on the appurtenant percentage undivided interest in the Common Areas and Facilities assigned to the Condominium Unit of each Owner, and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and lien on his Condominium Unit and may be enforced and collected as is provided in Article 6. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Article 9. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of ten percent (10%) per annum on the amount of the assessment and all reasonable attorney's fees incurred by the Association. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (a) Customary expenses of sale;
- (b) The balance of the lien of any first mortgage;
- (c) Ad valorem taxes and governmental assessments;
- (d) Unpaid common expenses and all costs, expenses and fees incurred by the Association;

- (e) Junior liens and encumbrances in the order of and to the extent of their priority; and
- (f) The balance remaining, if any, shall be paid to the Condominium Unit Owner or Multiple Owners.

9.3 Sale of Property. If all of the buildings and improvements on the property are damaged or destroyed, the Unit Owners and Multiple Owners, by affirmative vote of at least two-thirds the total vote of the Association (or their proxies or attorneys-in-fact in the case of first mortgagee) at a meeting of the Association duly called for such purpose, may elect to sell the property as a whole. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to affect such sale. The insurance indemnity, if any, shall be delivered prorata to the Unit Owners sustaining loss or damage.

#### ARTICLE 10

##### MISCELLANEOUS

10.1 Duration of Declaration. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect until the year 2001 or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect until Condominium Ownership of the project and this Declaration is terminated or revoked as hereinafter provided.

10.2 Revocation or Amendment. Except as otherwise provided, this Declaration shall not be revoked unless all of the owners, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all of the Condominium Units in the project consent and agree to such revocation by instrument(s) duly recorded. This Declaration shall not be amended unless the owners representing an aggregate ownership interest of sixty-six and two-thirds percent, or more, of the Common Areas and Facilities in the condominium project, and all of the holders of recorded first mortgages or deeds of trust consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the undivided interests in the Common Areas and Facilities appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all the unit owners, the Declarant, and all of the holders of any recorded mortgage or deed of trust as expressed in an amended Declaration duly recorded.

10.3 Registration of Mailing Address. Each owner shall register his mailing address with the Association, on such form as required by the Association, and notices or demands intended to be served upon an owner shall be sent by mail, postage prepaid, addressed in the name of the owner at such registered address.

10.4 Effect of Provisions of Declaration. Each provision of this Declaration, and an agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of leasehold, estate, right or interest to effectuate any provision of this Declaration shall:

10.4.1 Be deemed incorporated in each deed, assignment or other instrument by which any right, title or interest in the project or in any Condominium Unit is created, whether or not set forth or referred to in such instrument.

10.4.2 By virtue of acceptance of any right, title or interest in the project or in any Condominium Unit by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner, and, as a personal covenant, shall be binding on such owner and such owner's heirs, personal representatives, successors, and assigns, and shall be deemed a personal covenant to, with and for the benefit of the Association but not to, with or for the benefit of any other owner.

10.4.3 Be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running in each case, as a burden with and upon the title to the project and each Condominium Unit and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of the project and each Condominium Unit.

10.4.4 Be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the project and each Condominium Unit in favor of the Association.

10.5 Enforcement and Remedies. Each provision of this Declaration with respect to an owner or multiple owner or the Condominium Unit of such owner shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages, or, in the discretion of the Association, for so long as any owner fails to comply with any such provisions, by exclusion of such owner and such owner's guests from use of any Common Areas and Facilities. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

10.6 Priorities of Association Lien for Common Expenses. The owner of a Condominium Unit may create a junior mortgage (junior to the lien, deed of trust or other encumbrance of a



first mortgagee), liens or encumbrances on his interest in a Condominium Unit; provided, however, that any such junior mortgages, liens or encumbrances shall be subordinate to any lien of the Association for common expenses and all of the terms, conditions, covenants, restrictions, uses, limitations and obligations under this Declaration, Association Articles of Incorporation and Bylaws and provided, further, that such junior encumbrancer(s) shall release, for purposes of restoration of any improvements upon the encumbered condominium unit, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises by the Association. Such release shall be furnished forthwith by a junior mortgagee upon written request of the Association, and if such request is not granted, such release may be executed by the Association as attorney-in-fact for such junior mortgagee.

10.7 Limited Liability; Indemnification. Neither Declarant, the Association, the Board of Directors of the Association, nor any officer, agent or employee of any of the same shall be liable to the Association or any other owner for any action or for any failure to act with respect to any matter so long as such person or entity was not guilty of fraud, gross negligence or bad faith in taking such action or failing to act.

The Association shall indemnify Declarant, each member of the Board of Directors of the Association and any employee or agent of Declarant or the Association against any loss or threat of loss as a result of any claim or legal proceeding relating to the performance or nonperformance of any act concerning the activities of the Association; provided, however, that with respect to the subject matter of the claim or legal proceeding the party against whom the claim is made or legal proceeding is directed was not guilty of fraud, gross negligence or bad faith in such performance or nonperformance.

The indemnification authorized by this Article 10.7 shall include payment of (i) reasonable attorney's fees or other expenses incurred in settling any claim or threatened action or incurred in any finally adjudicated legal proceeding; and (ii) expenses incurred in the removal of any liens affecting any property of the indemnitee.

This Article 10.7 shall inure to the benefit of the Declarant, the Association, the members of the Board of Directors of the Association, the employees and agents of the Declarant and the Association, and their respective heirs, personal representatives, successors and assigns.

10.8 Reservations.

10.8.1 Declarant reserves to the Association the right to establish utility easements and other easements consistent with the condominium use of the project.

10.8.2 During the period of development and sale of the condominium units, the monthly assessments for common expenses shall be based upon the amount of the actual expenses incurred, which shall be allocated equitably among all of the owners, and shall not include any amount for contingencies, reserve or sinking funds.

10.8.3 Declarant reserves the right to dedicate any access roads serving this project for and to public use; to establish easements, reservations, exceptions and exclusions consistent with the condominium ownership of the project.

10.9 General.

10.9.1 This Declaration shall be binding and shall inure to the benefit of the Declarant, the Association and each owner, and the heirs, personal representatives, successors and assigns of each of them.

10.9.2 Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

10.9.3 The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision of this Declaration.

10.9.4 Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

10.9.5 The provisions of this Declaration shall be in addition to and supplemental to the New Mexico Building Unit Ownership Act of the State of New Mexico and any amendments thereto.

10.10 Lienholders and Non-Disturbance Agreement.

10.10.1 Any holder of a first mortgage or other equivalent lien on any Condominium Unit, whose name and address has been filed with the Association, shall be entitled to:

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

(b) Receive, upon written request, a copy of the annual financial statement within a reasonable time after such statement is prepared and accepted by the Association;

(c) Receive, upon written request, a notice of all meetings of the Association and to designate a representative to attend all such meetings;

(d) Notice of meetings to be held for the purpose of making any material amendment in the Declaration, the By-Laws, or the Articles of Incorporation of the Association;

(e) Notice of the effectuation of any decision by the Association to terminate any professional management contract and assume self-management of the condominium project.

(f) Receive, upon request, copies of insurance policies maintained by the Association upon the Common Elements for fire, extended coverage and liability, and copies

any fidelity bonds on officers or employees. The amount of such coverage shall be deemed adequate by the lender by making a loan on a Unit and such coverages shall not be reduced in amount during the life of such loan without prior consent of the lender.

10.10.2 The Declarant shall obtain from every holder of a mortgage or lien against the Declarant's interest, an agreement that in the event of a foreclosure of such mortgage or lien, the rights of all Owners shall not be disturbed and a successor to the Declarant shall take title to the property subject to the contractual rights of any Owner.

10.10.3 Every Multiple Owner who mortgages his interest in a Unit shall obtain from his mortgagee an agreement that in the event of a foreclosure of the mortgage, the rights of the other Multiple Owners in the Unit shall not be disturbed and if title is transferred by foreclosure of a mortgage, the succeeding Owner shall take title subject to the contractual rights of the other Multiple Owners of the Unit.

10.10.4 The non-disturbance instrument shall be in recordable form and shall be recorded in Colfax County, New Mexico and a copy thereof shall be delivered to the Association.

#### ARTICLE 11

##### RIGHTS RESERVED TO DECLARANT

1. Easements. Declarant reserves to itself the easements set forth on Exhibit 1, attached hereto.

2. Utilities. In addition to the easements reserved by Declarant in Section 1 of this Article 11, Declarant reserves the right to cause connections to be made, within said easements, for utilities to serve other lands owned by Declarant in the vicinity of the Real Property.

3. Declarant intends to develop additional condominium units on lands adjoining the real property. It is proposed that the condominium and association provided for herein shall be consolidated with such future projects. Any such consolidation shall provide for ownership of common areas and facilities, and voting rights, based upon square footage in the units in all consolidated condominium regimes.

#### ARTICLE 12

##### AGENT SERVICE OF PROCESS

12.1 The Initial Agent for Service of Process is John F. McCarthy, Jr, 220 Otero Street, Santa Fe, New Mexico.



IN WITNESS WHEREOF, Declarant has executed this Declaration this 1st day of August, 1980.

BAILEY-MERTZ ANGEL FIRE VENTURE  
a New Mexico partnership

By: Max A. Mertz  
General Partner

STATE OF NEW MEXICO )  
COUNTY OF Colfax ) ss.

The foregoing document was acknowledged before me by Max A. Mertz, a general partner of Bailey-Mertz Angel Fire Venture, a New Mexico partnership, for and on behalf of said partnership, this 1st day of August, 1981.



Jeannine J. Neal  
NOTARY PUBLIC

My Commission Expires:  
October 6, 1982

I. The Property A tract of land being part of Lots 1, 2, 3 and all of Lot 4, Block "G", Angel Fire Village Unit Two, Colfax County, New Mexico, being more particularly described as follows:

Beginning at the Northeast corner of Lot 4 of Block "G",

Thence S 58°33'22" W, 98.08 feet to the Southeast corner of Lot 4,

Thence S 14°41'22" W, 245.85 feet along the East lines of Lots 3, 2 and part of Lot 1,

Thence N 75°18'38" W, 125.00 feet to a point,

Thence N 14°41'22" E, 245.85 feet to a point,

Thence N 23°41'22" E, 58.50 feet to a point,

Thence N 66°18' 21" W, 16.60 feet to a point,

Thence N 33°41'49" E, 12.00 feet to a point,

Thence N 56°18'21" W, 33.42 feet to a point on the West line of Lot 3,

Thence Northeast 52.00 feet along a curve with a delta = 16°33'07", radius = 180.00 feet to a point,

Thence N 58°33'22" E, 98.08 feet to the Northwest corner of Lot 4,

Thence, S 31°26'38" E, 180.00 feet to the point and place of beginning.

Containing 1.303 acres more or less.

Together with the following non-exclusive easements, rights of use in which are reserved to Bailey-Mertz Angel Fire Venture; reserving to declarant the easements described in Section III hereof.

## II. EASEMENTS GRANTED

### 2.1 ROAD ON THE EAST SIDE:

An easement for ingress, egress and parking on and over a tract of land lying east of Block "G," Angel Fire Village Unit Two Subdivision, Colfax County, New Mexico, being more particularly described as follows:

Beginning at the Northeast corner of Lot 3 Block "G" of said subdivision, thence N 58°33'22" E, 219.08 feet along the east line of Lots 4 & 5 of Block "G," to a point,

Thence 94.72 feet on a curve to the left with a delta = 36°37'32", and a radius = 148.17 feet, to a point,

Thence N 21°55'50" E, 207.36 feet to a point,  
Thence 37.54 feet on a curve to the left with a  
delta = 143°22'28" radius = 15.00 feet, to a point,  
Thence N 58°33'22" E, 78.97 feet to a point,  
Thence S 31°26'38" E, 49.74 feet to a point,  
Thence S 21°55'50" W, 250.00 feet to a point,  
Thence 133.07 feet along a curve to the right with a  
delta = 36°37'32" radius = 208.17 feet, to a point,  
Thence S 58°33'22" W, 195.00 feet to a point,  
Thence S 08°17'50" W, 172.60 feet to a point,  
Thence S 43°30'00" E, 51.79 feet to a point,  
Thence 31.81 feet along a curve to the left with a  
delta = 72°53'43", radius = 25.00 feet, to a point,  
Thence 264.83 feet along a curve to the right with a  
delta = 252°53'43", radius = 60.00 feet, to a point,  
Thence N 43°30'00" W, 131.63 feet to a point,  
Thence 61.69 feet along a curve to the right with a  
delta = 58°11'22", radius = 60.74 feet, to a point,  
Thence N 14°41'22" E, 20.00 feet to a point,  
Thence N 11°35'31" W, 45.17 feet to a point on the  
east line of Lot 2,  
Thence N 14°41'22" E, 135.35 feet to the point and  
place of beginning.

## 2.2 TRACT C

An easement for ingress, egress and parking on and over a tract of land being part of Five Springs Road in Angel Fire Village Unit Two, Colfax County, New Mexico, being more particularly described as follows:

Beginning at the Northwest corner of Lot 5 of Block G of Angel Fire Village Unit 2,

Thence N 31°26'38" W, 26.87 feet to a point,

Thence S 54°40'44" W, 278.49 feet to a point,

Thence 133.85 feet along a curve to the left with a  
delta = 41°00'00", radius = 215.00 feet,



Thence S 13°20'44" W, 190.55 feet to a point,  
Thence S 75°18'38" E, 40.00 feet to a point,  
Thence N 14°41'22" E, 245.85 feet to a point,  
Thence 137.81 feet along a curve to the right with a  
delta = 43°52'00", and a radius = 180.00 feet to a  
point,  
Thence N 58°32'22" E, 219.08 feet to the point and  
place of beginning.

Containing 0.404 acres more or less.

#### 2.3 ROAD ACROSS LOT 5

An easement for ingress and egress on and over a  
tract of land lying in Lot 5 of Block "G," Angel Fire  
Village Unit Two Subdivision, Colfax County, New  
Mexico, being more particularly described as follows:

An easement 15.0 feet wide being 7.5 feet on either side  
of the following described centerline commencing at the  
Northwest corner of Lot 5,

Thence S 58°33'22" W, 27.00 feet to the point and  
place of beginning,

Thence, S 32°28'51" W, 104.65 feet to a point on the  
South line of Lot 5 and the end of this easement.

#### 2.4 UTILITY AND DRAINAGE EASEMENTS

An easement 12.0 feet wide being 6.0 feet on either side  
of the following described centerline, commencing at the  
N.W. corner of Lot 1, thence S. 14° 41' 22" W., 43.33  
feet to the point and place of beginning. Thence, S. 75°  
18' 38" E., 55.00 feet to the end of this easement.

An easement 10.0 feet wide being 5.00 feet on either side  
of the following described centerline, commencing at the  
N.W. corner of Lot 2, thence S. 14° 41' 22" W., 42.33  
feet to the point and place of beginning. Thence, S. 75°  
18' 38" E., 55.00 feet to a point being the end of this  
easement.

An easement being 5.0 feet wide and being 2.5 feet on either side of the following described center-line, commencing at the N.E. corner of Lot 1, Block "G" of the Angel Fire Village Unit Two, Colfax County, New Mexico. Thence, S. 14° 41' 22" W., 49.33 feet to a point. Thence, S. 75° 18' 38" E., 52.50 feet to the point and place of beginning. Thence, N. 14° 41' 22" E., 245.85 feet. Thence, N. 23° 41' 22" E., 58.40 feet to a point and being the end of this easement.

#### 2.5 PUMP HOUSE

Beginning at the N.W. corner of Lot 3 of said subdivision, thence S. 46° 10' 38" E., 48.50 feet to a point, thence S. 23° 41' 22" W., 6.32 feet to a point, thence N. 66° 18' 38" W., 52.28 feet to a point, thence 24.00 feet along a curve with a delta = 7° 38' 19" to the point and place of beginning.

### III. EASEMENTS RESERVED

#### 3.1 MAIN UTILITY EASEMENT

An easement for installation and maintenance of utilities on and over a tract of land lying in Lots 1, 2, 3 and 4, Block "G", Angel Fire Village, Unit 2, Colfax County, New Mexico, being more particularly described as follows:

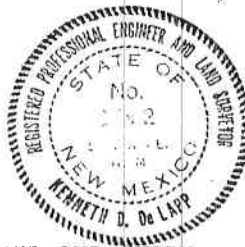
Beginning at a point on the East boundary of Lot 1, from which the Southeast corner of the property described in Paragraph 1 above bears S. 14° 41' 22" W., a distance of 32.0 feet; from said point and place of beginning, thence N. 38° 51' 59" W., 82.41 feet to a point, thence, N. 10° 06' 25" W., 77.0 feet to a point at which is located a sanitary sewer manhole; thence, N. 11° 47' 47" E., a distance of 95.80 feet to a point, thence, N. 98° 24' 11" E., 187.0 feet to a point on the North boundary of Lot 4.

#### 3.2 18 FOOT PARKING AND ACCESS EASEMENT

Beginning at a point from whence the NE corner of Lot 3 bears S75°18'38"E, 125.00 feet.  
Thence S14°41'22"W, 195.34 feet to a point,  
thence N51°08'16"E, 42.94 feet to a point,  
thence N14°41'22"E, 155.25 feet to a point,  
thence N23°41'22"E, 55.68 feet to a point,  
thence S66°18'21"E, 18.00 feet to a point,  
thence S23°41'22"W, 58.50 feet to the point and place of beginning.

STATE OF NEW MEXICO )  
 ) ss:  
COUNTY OF )

I certify that this floor plan depicts the individual units, the unit designations, and the dimensions of the units and the plan is a copy of portions of the plans of The Lift Condominium, Angel Fire, New Mexico, as filed with and approved by the Construction Industries Division, New Mexico Department of Commerce and Industry, and the County Commission of Colfax County, New Mexico.



*Kenneth D. DeLapp*  
KENNETH D. DeLAPP  
Engineer and Land Surveyor

SUBSCRIBED AND SWORN to before me this 16 day of

July, 1981.

*John M. Patterson*  
NOTARY PUBLIC

My Commission Expires:

28 Feb 82

ALSO REFERRED TO HEREIN are the Plans filed in Condominium floor plans, records of Colfax County, New Mexico on August 5, 1981 consisting of sheets 1 through 3.



# THE LIFT CONDOS

<u>UNIT NO.</u>	<u>AREA IN SQ. FT.</u>	<u>PERCENTAGE INTEREST</u>	<u>VALUE</u>
1-A	1616	0.0364	\$ 153,520.00
2-A	1632	0.0368	155,040.00
3-A	1632	0.0368	155,040.00
4-A	1616	0.0364	153,520.00
1-B	1560	0.0352	148,200.00
2-B	834	0.0188	83,400.00
3-B	716	0.0161	71,600.00
1-C	1565	0.0353	148,675.00
2-C	1561	0.0352	148,295.00
1-D	1548	0.0349	147,060.00
2-D	824	0.0186	82,400.00
3-D	712	0.0160	71,200.00
1-E	714	0.0161	71,400.00
2-E	831	0.0188	83,100.00
3-E	710	0.0160	71,000.00
4-E	831	0.0188	83,100.00
5-E	710	0.0160	71,000.00
6-E	831	0.0188	83,100.00
7-E	710	0.0160	71,000.00
8-E	831	0.0188	83,100.00
9-E	711	0.0160	71,100.00
10-E	830	0.0187	83,000.00
1-F	1556	0.0351	147,820.00
2-F	1544	0.0348	146,680.00
3-F	1548	0.0348	147,060.00
1-G	1632	0.0368	155,040.00
2-G	1616	0.0364	163,520.00
3-G	1632	0.0368	155,040.00
4-G	1616	0.0364	153,520.00
5-G	1616	0.0364	153,520.00
6-G	1616	0.0364	153,520.00
1-H	1616	0.0364	153,520.00
2-H	1616	0.0364	153,520.00
3-H	1616	0.0364	153,520.00
4-H	1616	0.0364	153,520.00
\$ 44,365		100%	\$ 4,278,650

BY-LAWS  
OF  
THE LIFT CONDOMINIUM ASSOCIATION

The name of the organization shall be The Lift Condominium Association.

ARTICLE I

OBJECT

1. The purpose for which this nonprofit Association is formed is to govern the condominium property which has been or will be submitted to the provisions of the New Mexico Building Unit Ownership Act by the recording of the Declaration and any Supplements thereto and Maps and any Supplements thereto bearing the name associated with this Association.
2. All present or future owners, tenants, future tenants, or any other person that might use in any manner the facilities of the project located on the property therein described are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the condominium units (hereinafter referred to as "units") or the mere act of occupancy of any of said units will signify that these By-Laws are accepted, ratified and will be complied with.

ARTICLE II

MEMBERSHIP, VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

1. Membership. Record ownership of a fee simple or individual fee interest in a condominium unit in The Lift Condominium is required in order to qualify for membership in this Association. Any person on becoming an owner of such a condominium unit shall automatically become a member of this Association and be subject to these By-Laws. Such membership shall terminate without any formal Association action whenever such person ceases to own a condominium unit, but such termination shall not relieve or release any such former owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in the Association, or impair any rights or remedies which the unit owners have, either through the Board of Directors of the Association or directly, against such former owner and member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto.

2. Voting. Voting shall be based upon the percentage of the undivided interest owned by each unit owner in all of the general common elements. Cumulative voting is prohibited but proxy voting is permitted.

3. Majority of Unit Owners. As used in these By-Laws, the term "majority of unit owners" shall mean those owners of more than fifty percent (50%) of the undivided ownership of the general common elements.

4. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of members holding fifty-one percent of the votes entitled to be cast shall constitute a quorum. An affirmative vote of a majority of the unit owners present, whether in person or by proxy, shall be required to transact the business of the meeting.

### ARTICLE III

#### ADMINISTRATION

1. Association Responsibilities. The owners of the condominium units will constitute the Association of Unit Owners, herein referred to as "Association", who will have the responsibility of administering the project through a Board of Directors, herein referred to as the "Board".

2. Place of Meeting. Meetings of the Association shall be held at such place within or without the State of New Mexico as the Board may determine.

3. Annual Meeting. The first meeting of the Association members shall be held within ninety (90) days following the giving of notice by the Declarant that all of the condominium units in the entire condominium project have been sold. Thereafter, the annual meetings of the Association shall be held on the first day of each succeeding year. At such meetings there shall be elected by ballot of the owners a Board in accordance with the requirements of Section 4 of Article IV of the By-Laws. The owners may also transact such other business of the Association as may properly come before them. "Declarant" as used in these By-Laws refers to the Declarant named in the Condominium Declaration for The Lift Condominium.

4. Special Meetings. The President may call a special meeting of the owners upon his own initiative or as directed by resolution of the Board or upon receipt of a petition signed by at least one-third of the owners. The notice of any special meeting shall state the time and place of such meeting and the purpose



thereof. No business except as stated in the notice shall be transacted at a special meeting unless by consent of two-thirds of the owners present, either in person or by proxy. Any such meetings shall be held at such place and time as the President determines within thirty (30) days after receipt by the President of such resolution or petition.

5. Notice Of Meetings. The Secretary shall cause to be mailed or delivered a notice of each annual or special meeting, stating the purpose thereof as well as the time and place it is to be held, to each owner of record, at the registered address of each owner, at least ten (10), but not more than thirty (30) days prior to such meeting. The mailing of a notice in the manner provided in this section or the delivery of such notice shall be considered notice served, and the Certificate of the Secretary that notice was duly given shall be prima facie evidence thereof.

6. Adjourned Meetings. If any meeting of owners cannot be organized because a quorum has not attended, the owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

7. Order Of Business. The order of business at all meetings of the owners of units shall be as follows:

- (a) Roll call and certifying proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of Minutes of preceding meetings.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of managers.
- (g) Unfinished business.
- (h) New business.
- (i) Adjournment.

8. Performance Of Functions By Declarant. The rights, duties and functions of the Board shall, at the Declarant's option, be exercised by the Declarant by and through those persons named as Directors in the Articles of Incorporation until the development of the entire condominium project has been completed and until all condominium units have been sold.

#### ARTICLE IV

##### BOARD OF DIRECTORS

1. Number and Qualifications. The Declarant shall exercise the rights, duties and functions of the Board as provided therein

by and through the persons named in the Articles of Incorporation as the Directors until the first meeting of the Members of the Association. At the first meeting there shall be elected any three members of the Association to the Board who shall thereafter govern the affairs of this Association until their successors have been duly elected and qualified. The number of Directors may be increased to five by a vote of the majority of the members at a regular or special meeting.

2. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the condominium project as a first-class residential condominium property. Such powers and duties of the Board shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the owners of the condominium units:

(a) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Condominium Declaration submitting the property to the provisions of the Building Unit Ownership Act of the State of New Mexico, the By-Laws of the Association and supplements and amendments thereto.

(b) To establish, make and enforce compliance with such rules and regulations as may be necessary for the operation, rentals, use and occupancy of all of the condominium units with the right to amend same from time to time. A copy of such rules and regulations shall be delivered or mailed to each member upon the adoption thereof.

(c) With the assistance of the Managing Agent, to incur such costs and expenses as may be necessary to keep in good order, condition and repair all of the general and limited common elements and all items of common personal property.

(d) With the assistance of the Managing Agent, to insure and keep insured all of the insurable general common elements and condominium units in an amount equal to the maximum replacement value. To insure and keep insured all of the common fixtures, common equipment and common personal property for the benefit of the owners of the condominium units and their first mortgagees. Further, to obtain and maintain comprehensive liability insurance covering the entire premises.

(e) With the assistance of the Managing Agent, to prepare a budget for the condominium at least annually in order to determine the amount of the common assessments payable by the unit owners to meet the common expenses of the condominium project;

allocate and assess such common charges among the unit owners according to their respective common ownership interests in and to the general common elements; and by majority vote of the Board, to adjust, decrease or increase the amount of the quarterly or monthly assessments, and remit or return any excess of assessments over expenses, working capital, sinking funds, reserve for deferred maintenance and for replacement to the owners at the end of each operating year. To levy and collect special assessments whenever in the opinion of the Board it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital expenses or because of emergencies.

(f) To collect delinquent assessments by and through the Managing Agent by suit or otherwise and to enjoin or seek damages from an owner as is provided in the Declaration and these By-Laws. To enforce a late charge of not more than \$10.00 per month and to collect interest at the rate of twelve percent (12%) per annum in connection with assessments remaining unpaid more than ten (10) days from due date for payment thereof, together with all expenses, including attorneys' fees, incurred. The Board shall have the duty, right, power and authority to prohibit use of a condominium unit by his tenants and lessees in the event that any assessment made remains unpaid more than thirty (30) days from the due date for payment thereof.

(g) To protect and defend in the name of the Association any part or all of the condominium project from loss and damage by suit or otherwise.

(h) To borrow funds in order to pay for any expenditures or outlay required pursuant to the authority granted by and the provisions of the recorded Declaration and these By-Laws, and to execute all such instruments evidencing such indebtedness as the Board may deem necessary and give security therefor. Such indebtedness shall be the several obligation of all of the owners in the same proportion as their interest in the general common elements. The persons who shall be authorized to execute promissory notes and securing instruments shall be the President and Secretary or Assistant Secretary.

(i) To enter into contracts to carry out their duties and powers.

(j) To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable.

(k) To make repairs, additions, alterations and improvements to the general common elements consistent with managing



the condominium project in a first-class manner and consistent with the best interests of the unit owners. Such duties may be delegated to the Managing Agent.

(l) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements and to permit examination thereof at any reasonable time by each of the owners. Such duties may be delegated to the Managing Agent

(m) With the assistance of the Managing Agent, if any, to prepare and deliver annually to each owner a consolidated statement showing receipts, expenses or disbursements since the last such statement.

(n) To meet at least semi-annually at which time an employee of the Managing Agent, if any, shall be in attendance.

(o) In general, to carry on the administration of this Association and to do all of those things necessary and reasonable in order to carry out the governing and the operation of this condominium property.

(p) To control and manage the use of all common parking areas, open spaces, common streets and other common property.

(q) To employ for the Association a managing agent who shall have and exercise those duties and powers granted to it by the Board but not those powers which the Board, by law, may not delegate.

3. Limitations on Contracts. Any agreement for the professional management of the condominium project, or any other contract providing for services of the developer, sponsor or builder, shall not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

4. No Waiver Of Rights. The omission or failure of the Association or any condominium unit owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Condominium Declaration, the By-Laws or the Rules and Regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board or the Managing Agent shall have the right to enforce the same thereafter.

5. Election And Term Of Office. At the first meeting of the Association the term of office of one Director shall be fixed at

three (3) years; the term of office of one Director shall be fixed at two (2) years; and the term of office of one Director shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of three (3) years. Except as is otherwise provided by these By-Laws, the Directors shall hold office until their successors have been elected and hold their first meeting. If the number of Directors is increased to five by the members, the newly elected Board members shall serve terms coincidental to the two longest terms of the Board members then serving as Directors.

6. Vacancies. Vacancies in the Board caused by any reason other than the removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until his successor is elected.

7. Removal Of Directors. Subject to the provisions of Paragraph 4.3 of the Declaration, at any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the owners shall be given an opportunity to be heard at the meeting prior to voting thereon.

8. Organization Meeting. The first meeting of a newly elected Board following each annual meeting of the unit owners shall be held within ten (10) days thereafter at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

9. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each Director, personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting.

10. Special Meetings. Special meetings of the Board may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board shall be called by the President or Secretary in like manner and on like notice on the written request of two or more Directors.



11. Waiver of Notice. Before or at any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

12. Board Of Directors' Quorum. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such readjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

13. Fidelity Bonds. The Board may require that all officers and employees of the Association and the Managing Agent who handle or are responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be a common expense.

## ARTICLE V

### FISCAL MANAGEMENT

The provisions for fiscal management of the condominium units for and on behalf of all of the unit owners as set forth in the Condominium Declaration may be supplemented by the following provisions:

14. Accounts. The funds and expenditures of the unit owners by and through the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses:

(a) Current expense, which shall include all funds and expenditures within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to additional improvements.

(b) Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

(c) Reserve for replacement, which shall include funds for repair or replacement required because of damage, wear or obsolescence.



## ARTICLE VI

### OFFICERS

1. Designation. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board, and such assistant officers as the Board shall from time to time elect. Such officers need not be members of the Board, but each shall be an owner of a condominium unit in this condominium project, or the Declarant or their representative(s). The office of President and Treasurer may be held by the same person, and the office of Vice President and Secretary may be held by the same person.
2. Election of Officers. The officers of the Association shall be elected annually by the Board at the organization meeting of each new Board and shall hold office at the pleasure of the Board.
3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.
4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association or as may be established by the Board or by the members of the Association at any regular or special meetings.
5. Vice President. The Vice President shall have all the powers and authority and perform all the functions and duties of the President, in the absence of the President, or his inability for any reason to exercise such powers and functions or perform such duties.
6. Secretary. The Secretary shall keep all the minutes of the meetings of the Board and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

The Secretary shall compile and keep up-to-date at the principal office of the Association a complete list of members and their registered addresses as shown on the records of the Association. Such list shall also show opposite each member's name the number or other appropriate designation of the unit owned by such member, and the undivided interest in the general common elements. Such list shall be open to inspection by members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours. In addition, a list of all mortgagees of units shall be maintained. The records referred to in this subsection may be maintained by the Managing Agent.

7. Treasurer. The Treasurer shall have the responsibility for Association funds and be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; provided, however, that when a Managing Agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer's only responsibility shall be to review the accounts of the Managing Agent not less often than semi-annually.

## ARTICLE VII

### INDEMNIFICATION OF OFFICERS, DIRECTORS AND MANAGING AGENT

1. Indemnification. The Association shall indemnify every Director, officer, Managing Agent, their respective successors, personal representatives and heirs, against all loss, costs, and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director, officer or Managing Agent of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director, officer or Managing Agent in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director, officer or Managing Agent may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in this Article VII contained shall be deemed to obligate the Association to indemnify any

member or owner of a condominium unit who is or has been a Director or officer of the Association with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Condominium Declaration.

2. Other. Contracts or other commitments made by the Board of Directors, officers or the Managing Agent shall be made as agent for the unit owners, and they shall have no personal responsibility on any such contract or commitment (except as unit owners), and the liability of any unit owner on any such contract or commitment shall be limited to such proportionate share of the total liability thereof as the common interest of all of the unit owners, except that any losses incurred because of any inability to collect such proportionate amount of the total liability owed by an owner shall be shared proportionately by the owners.

## ARTICLE VIII

### AMENDMENTS

1. These By-Laws may be amended by a majority of the members at a duly constituted meeting of the members for such purpose; provided, however, that no amendment shall conflict with or minimize the intended effect of the provisions of the Articles of Incorporation or the Declaration.

2. In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control. In case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE IX

### MORTGAGES

1. Notice To Association. An owner who mortgages his unit shall notify the Association through the Managing Agent if any, or the Association Secretary, giving the name and address of his mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Units".

2. Notice Of Unpaid Common Assessments. The Association, whenever so requested in writing by a mortgagee of a condominium unit, shall promptly report any then unpaid common assessments due from, or any other default by, the owner of a mortgaged unit.

3. Notice Of Default. When giving notice to a unit owner of a default in paying common assessments or other default, the Board shall send a copy of such notice to each holder of a mortgage covering such condominium unit whose name and address has theretofore been furnished to the Board.



4. Examination Of Books. Each unit owner and each mortgagee of a condominium unit shall be permitted to examine the books of account of the condominium at reasonable times on business days, but not more than once each month.

## ARTICLE X

### EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS AND DESIGNATION OF VOTING REPRESENTATIVE

1. Proof of Ownership. Except for those owners who initially purchase a condominium unit from Declarant, any person on becoming an owner of a condominium unit shall furnish to the Managing Agent or Board a machine or a certified copy of the recorded instrument vesting that person with an interest or ownership in the condominium unit, which copy shall remain in the files of the Association.

2. Registration Of Mailing Address. The owner or several owners of an individual condominium unit shall have one and the same registered mailing address to be used by the Association for mailing of statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, association or other legal entity or any combination thereof to be used by the Association. Such registered address of a condominium unit owner or owners shall be furnished by such owners to the Managing Agent or Board within fifteen (15) days after transfer of title, or after a change of address, and such registration shall be in written form and signed by all of the owners of the condominium unit or by such persons as are authorized by law to represent the interest of (all of) the owners thereof.

3. Designation Of Voting Representative - Proxy. If a condominium unit is owned by one person, his right to vote shall be established by the record title thereto. If title to a condominium unit is held by more than one person or by a firm, corporation, partnership association or other legal entity, or any combination thereof, such owners shall execute a proxy appointing and authorizing one person or alternate persons to attend all annual and special meetings of members and thereat to cast whatever vote the owner himself might cast if he were personally present. Such proxy shall be effective and remain in force unless voluntarily revoked, amended or sooner terminated by operation of law; provided, however, that within thirty (30) days after such revocation, amendment or termination, the owners shall reappoint and authorize one person or alternate persons to attend all annual and special meetings as provided by this section 3.

The requirements herein contained in this Article X shall be first met before an owner of a condominium unit shall be deemed

in good standing and entitled to vote at any annual or special meeting of members.

## ARTICLE XI

### OBLIGATIONS OF THE OWNERS

1. Assessments. All owners shall be obligated to pay the monthly or quarterly assessments imposed by the Association to meet the common expenses. The assessments shall be made pro rata according to percentage interest in and to the general common elements. Assessments shall be due in advance. A member shall be deemed to be in good standing and entitled to vote at any annual or at a special meeting of members, within the meaning of these By-Laws, if, and only if, he shall have fully paid all assessments made or levied against him and the condominium unit owned by him.
2. Notice Of Lien Or Suit. An owner shall give notice to the Association of every lien or encumbrance upon his condominium unit, other than for taxes and special assessments, and notice of every suit or other proceeding which may affect the title to his condominium unit, and such notice shall be given in writing five (5) days after the owner has knowledge thereof.
3. Mechanic's Lien. Each owner agrees to indemnify and to hold each of the other owners harmless from any and all claims of mechanic's lien filed against other units and the appurtenant general common elements for labor, materials, services or other products incorporated in the owner's unit. In the event such a lien is filed and/or a suit for foreclosure of mechanic's lien is commenced, then within ten (10) days thereafter such owner shall be required to deposit with the Association cash or negotiable securities equal to one and one-half of the amount of such claim plus interest for one year together with a sum equal to ten percent of the amount of such claim but not less than One Hundred Fifty Dollars which latter sum may be used by the Association for any costs and expenses incurred, including attorneys' fees incurred for legal advice and counsel. Except as is otherwise provided, such sum or securities shall be held by the Association pending final adjudication or settlement of the claim or litigation. Disbursement of such funds or proceeds shall be made by the Association to insure payment of or on account of such final judgment or settlement. Any deficiency, including attorneys' fees incurred by the Association, shall be paid forthwith by the subject owner, and his failure to so pay shall entitle the Association to make such payment, and the amount thereof shall be a debt of the owner and a lien against his condominium unit which may be foreclosed as is provided in Paragraph 6.6 of the Condominium

Declaration. All advancements, payments, costs and expenses, including attorneys' fees, incurred by the Association shall be forthwith reimbursed to it by such owner(s), and the owner shall be liable to the Association for the payment of interest at the rate of twelve-percent (12%) per annum on all such sums paid or incurred by the Association.

4. Maintenance And Repair.

(a) Every owner must perform promptly, at his own expense, all maintenance and repair work within his own unit which, if omitted, would affect the appearance of or the aesthetic integrity of part or all of the condominium project.

(b) All the repairs of internal installations of the unit such as water, light, gas, power, sewage, telephone, sanitary installations, doors, windows, electrical fixtures and all other accessories, equipment and fixtures shall be at the owner's expense.

(c) An owner shall be obligated to reimburse the Association promptly upon receipt of its statement for any expenditures incurred by it in repairing or replacing any general or limited common element damaged by his negligence or by the negligence of his tenants or agents or guests.

5. General.

(a) Each owner shall comply strictly with the provisions of the recorded Condominium Declaration and these By-Laws and amendments thereto.

(b) Each owner shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which this condominium project was built.

6. Uses Of Units - Internal Changes.

(a) All units shall be utilized only for residential purposes as is provided in the Condominium Declaration.

(b) An owner shall not make structural modifications or alterations to his unit or installations located therein without the written approval of the Board. The Board shall be notified in writing of the intended modifications through the Managing Agent, or if no Managing Agent is employed, then, through the President of the Board. The Association shall have the obligation to answer an owner's request within thirty (30) days after such notice, and failure to do so within such time shall mean



that there is no objection to the proposed modifications or alterations.

7. Use Of General Common Elements And Limited Common Elements.

Each owner may use the general common elements, the limited common elements appurtenant to his condominium unit, sidewalks, pathways, roads and streets and other common elements located within the entire condominium project in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other owners, and subject to the rules and regulations contained in these By-Laws and established by the Board as is provided in Section 9 of this Article.

8. Right Of Entry.

(a) An owner shall and does grant the right of entry to the Managing Agent or to any other person authorized by the Board in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.

(b) An owner shall permit other owners, or their representatives, to enter his unit for the purpose of performing installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of other units, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In the case of an emergency, such right of entry shall be immediate.

9. Rules And Regulations.

(a) The initial rules and regulations, which shall be effective until amended or supplemented by the Board, are annexed hereto and made a part hereof as Schedule A.

(b) The Board reserves the power to establish, make and enforce compliance with such additional rules and regulations as may be necessary for the operation, use and occupancy of this condominium project with the right to amend same from time to time. Copies of such rules and regulations shall be furnished to each unit owner prior to the date when the same shall be effective.

10. Destruction And Obsolescence. Each owner, upon becoming an owner of a condominium unit, thereby grants his power of attorney in favor of the Association, irrevocably appointing the Association his attorney-in-fact to deal with the owner's condominium unit upon its damage, destruction or obsolescence, all as is provided in the Condominium Declaration.

## ARTICLE XII

### ABATEMENT AND ENJOINMENT OF VIOLATIONS BY UNIT OWNERS

The violation of any rule or regulation adopted by the Board, or the breach of any By-Law, or the breach of any provision of the Declaration, shall give the Board or the Managing Agent the right, in addition to any other rights set forth therein, (i) to enter the unit in 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 person, structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions thereof, and the Board or Managing Agent shall not be deemed guilty in any manner of trespass, and to expel, remove and put out, using such force as may be necessary in so doing, without being liable to prosecution or in damages therefor; (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

## ARTICLE XIII

### COMMITTEES

1. Designation. The Board may, but shall not be required, to appoint an executive committee, and it may designate and appoint members to the standing committees.
2. Executive Committee. The executive committee shall consist of two persons who are members and who shall be appointed by the Board from the members of the Board. One member shall be the President. The executive committee shall supervise the affairs of the Association and shall regulate its internal economy, approve expenditures and commitments, act and carry out the established policies of the Association and report to the Directors at each meeting of the Board. The executive committee may hold regular meetings, monthly or as it may in its discretion determine. Special meetings may be called at any time by the Chairman of the committee or by any of its members, either by telephone, telegraph, mail or personally, and a special meeting may be held by telephone.
3. Nominating Committee. Before each annual meeting, the Board may appoint a committee of three members who shall nominate candidates for the Board. The names of the candidates shall be submitted on or before thirty (30) days before the election. Members may submit names of candidates other than those submitted by the nominating committee at least sixty (60) days prior to the election. Unless such names are submitted, either by the nominating committee or by the members, no person shall be elected

whose name is not so submitted unless no nominations are made, in which event the names of candidates shall be submitted at the election by the members.

4. Vacancies. A vacancy in any committee shall be filled by the President until the next meeting of the Board.

#### ARTICLE XIV

##### ASSOCIATION - NOT FOR PROFIT

This Association is not organized for profit. No member, member of the Board, officer or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of any member of the Board, officer or member; provided, however, always (1) that reasonable compensation may be paid to any member, Director or officer while acting as an agent or employee of the Association, for services rendered in effecting one or more of the purposes of the Association, and (2) that any member, Director or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association. The provisions herein are not applicable to the Managing Agent, who shall perform the manager's duties and functions according to written agreement for the compensation stated therein.

#### ARTICLE XV

##### MORTGAGEES AS PROXIES

Condominium unit owners shall have the right to irrevocably constitute and appoint the beneficiary of a mortgage their true and lawful attorney to vote their unit membership in this Association at any and all meetings of the Association and to vest in such beneficiary or his nominee any and all rights, privileges and powers that they have as unit owners under the Certificate of Incorporation and By-Laws of this Association or by virtue of the recorded Condominium Declaration. Such proxy shall become effective upon the filing of a notice by the beneficiary with the Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the Managing Agent or the unit owners to carry out their duties as set forth in the Condominium Declaration. A release of the beneficiary's mortgage shall operate to revoke such proxy. Nothing herein contained