

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

WHEREAS, BSC Partners, a general partnership, herein after called "Developer", was the owner in fee simple of certain real property located in Colfax County, New Mexico, described on Exhibits 1 and 1A annexed hereto, and,

WHEREAS, A&M Partners, a general partnership, previously submitted the real property described on Exhibit 2 annexed hereto to a "Condominium Declaration for the Wren" recorded in Book 78, Misc., page 469, records of Colfax County, New Mexico; and

WHEREAS, Building A consisting of fourteen (14) residential units has been constructed on the real property described on Exhibit 2 and Building B consisting of fourteen (14) residential units and a garage has been constructed on the real property described on Exhibit 1, which building are connected and have common areas and facilities for use by owners of units in both buildings; and

WHEREAS, title to the residential units and the common areas and facilities in Building A has been transferred to individual parties, hereinafter called "Owners"; and

WHEREAS, it was the desire and intention of the Developer and the Owners of units in Building A to enable the aforementioned real property together with all buildings, improvements and other permanent fixtures of whatsoever kind thereon, all easements, rights, servitudes and privileges belonging or in any wise appertaining thereto, and all chattels intended for use in connection therewith, hereinafter called the "property", to be owned by his the Owners and their grantees, successors, assigns, heirs, and personal representatives under condominium ownership pursuant to the provisions of the New Mexico Building Unit Ownership Act, as amended from time to time, and

WHEREAS, the Developer has established, for its benefit and for the mutual benefit of all future owners of the property, or any part thereof, certain easements and rights in, over and upon the real property described on Exhibit 1 and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Condominium Declaration for Building A established for the mutual benefit of all Owners of the property, or any part thereof, certain easements and rights in, over and upon the real property described on Exhibit 2 and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, all of the present Owners of units in the Wren, Building A, desire to amend the "Condominium Declaration for the Wren", previously filed in connection with the Wren, in order to accomplish the foregoing purposes and objectives,

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

NOW THEREFORE, the Owners declare as follows:

### Amendment of Prior Declarations:

The aforementioned "Condominium Declaration for the Wren" dated April 22, 1974, filed for record in the office of the County Clerk, Colfax County, New Mexico, New Mexico, on \_\_\_\_\_, 1974, recorded in Book 78, Misc., page 469 to \_\_\_\_\_, inclusive, is hereby amended in its entirety pursuant to and in compliance with the New Mexico Building Unit Ownership Act.

### Submission of Property:

The Developer and the Owners submitted all of Lots 3 and 4, Block E, Angel Fire Village Unit 2, located at Angel Fire, County of Colfax, State of New Mexico, more particularly described on Exhibits 1, 1A and 2 attached hereto and incorporated herein by reference to the New Mexico Building Unit Ownership Act, as amended from time to time, and the Developer and the Owners declare that all of the property is and shall be owned, conveyed, encumbered, leased, used, occupied and improved subject to the New Mexico Building Unit Ownership Act, as amended from time to time, and subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, which shall be deemed to run with the land and shall be a burden and a benefit to the Owners, and any person acquiring or owning an interest in the property, their grantees, successors, assigns, heirs, personal representatives and administrators.

## ARTICLE I

### DEFINITIONS

- 1.1 **"Assessments"** are common expenses as defined in Article 6 hereof.
- 1.2 **"Association"** means The Wren Condominium Association, a New Mexico corporation not for profit, its successors 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"** mean County of Colfax, New Mexico.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

1.7 **"General Common Elements"** means all of the project, 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, including but not limited to the following:

(a) All foundations, columns, girders, beams and supports of a building (s) on the real property.

(b) The exterior walls, the main or bearing walls elevators, the main or bearing subflooring and the roofs of the building(s) on the real property.

(c) All common entrances, exits, halls, corridors, lobbies, basements, elevators, stairs, stairways and lounges.

(d) All utility, service and maintenance rooms, space, fixtures, apparatus, installations and facilities for power, light, gas, telephone, television, hot water, cold water, heating, incineration, or similar utility service or maintenance purposes, provided they do not exist solely to serve a unit in which they may be located, including furnaces, tanks, pumps, motors, fans, compressors, vents, ducts, flues, wires, pipes, conduits and other similar fixtures, apparatus, installations and facilities.

(e) Parking lots, sidewalks and access roads.

(f) All improvements other than the units, as defined, are a part of the general common elements, except as otherwise provided in this Declaration.

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

1.9. **"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.

1.10. **"Owner"** means a person(s), firm, corporation or partnership, association or other legal entity, or any combination thereof, who is the owner of a condominium unit.

1.11. **"Project"** means the real property and all improvements on the real property.

1.12. **"Real Property"** means the real property located in the County of Colfax, New Mexico, described on Exhibits 1, 1A and 2 annexed hereto.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

1.13 **"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. Each apartment, Exhibit 4, 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.

### 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 general common elements as set forth in Exhibit 3.

2.2 **Physical Description of Condominium Units.** The building constructed on the property described on Exhibit 1 consists of a maximum of fourteen (14) individual apartment units. The buildings constructed on the property described on Exhibit 2 consists of a maximum of fourteen (14) individual apartment units. The apartment units shall be devoted to residential purposes only. Construction of the buildings is wood-frame with plywood exterior, concrete and concrete block; double hardy walls; textured walls and ceilings; thermopane doors and windows; and all electric radiant heat. All apartments shall be supplied with electrical, water and plumbing connections. Each apartment is heated by an individual heating system. Building A and Building B are separated by an eight inch block wall.

2.3 **Limited Common Elements.** A portion of the general common elements is reserved for the exclusive use of the individual owners of the respective unit. The limited common elements so reserved shall be identified on the Floor Plan attached hereto as Exhibit 4; provided, however, that any balcony or deck which is accessible from, associated with and which adjoins a unit and the same numerical designation as the unit so identified on the Floor Plan, shall, without further reference thereto, be used in connection with such unit to the exclusion of the use thereof by there other owners of the general common elements, 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, and deed of trust, mortgage or other instrument.

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

2.4.1 A contract written before the filing for record of the Floor Plan and the Amended Declaration may describe a condominium unit by its identifying unit

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

number and building symbol followed by the name of this condominium with further reference to the plat and Declaration to be filed for record.

2.4.2 Subsequent to the record filing of the Declaration and the Floor Plan, every contract, deed, mortgage, encumbrance will or any other Instrument may describe the condominium unit according to the following description:

### Description

Condominium Unit\_\_\_\_\_, Building\_\_\_\_\_, according to the Floor Plan filed for record in Volume \_\_\_\_, Maps and Plats, Page \_\_\_\_\_ and the Amended Condominium Declaration for the Wren 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 be common area and facilities, which unit shall be used for residential purposes only and subject to other restrictive covenants set forth in the Declaration.

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.

2.4.3 Each such description shall be deemed to include and describe the entire condominium unit, including the appurtenant undivided interest in the general common elements, a non-exclusive easement for ingress and egress to and from an owner's unit, exclusive use of any limited common element, and all of the other rights, easements, obligations, limitations, covenants and restrictions as provided in this Declaration.

2.5 Inseparability of a Condominium Unit. Each unit, appurtenant undivided interest in the general common elements and any appurtenant limited common elements shall together compromise one condominium unit, shall be inseparable and may be conveyed, leased, demised, transferred, assigned, subleased or encumbered only as condominium unit.

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

2.7 Easements for Encroachments. If any part of the general common elements 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 general common elements, 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 general common elements 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

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 any special improvement district or 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 general common elements shall be apportioned among the condominium units in proportion to the fractional or percentage undivided interests in the general common elements, including the real property appurtenant to and part of such 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 General Common Elements.** Subject to the other provisions of the Declaration, each owner shall have a non-exclusive right to use and enjoy the general common elements, 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 shall have 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 the Declaration, each 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.

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

3.4.1 For maintenance purposes, an 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, wallpaper, paneling, paint, wall and floor linoleum and carpeting, 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 general common elements. Such utilities shall not be disturbed or relocated by an owner without the written consent and approval of the Board of Directors of the

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 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 conditions 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 3, 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.

3.5 **Association Rights**. The Association shall have a non-exclusive right and easement to make such use of general common elements, 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 **Owner's Easement for Access, Support and Utilities**. Each 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 general common elements. Each owner shall have a non-exclusive easement in and over general common elements, including those that are within the unit of another 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 general common elements may be located within a unit or may be conveniently accessible only through a unit. The Association and each owner shall have an easement, which may be exercised for any owner by the Association as his agent, for access through each unit and to all general common elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the general common elements 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 general common elements 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 general common elements or

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

as a result of emergency repairs within another unit shall be a common expense of all of the owners; provided, however, that if such damage is caused by negligent or tortious act of a unit owner, members of his family, his agent, employees, invitee, licensee or tenant, then such unit owner shall be responsible and liable for all restoration to the same condition in which they existed prior to the damage. All maintenance, repairs and replacements of the general common elements, 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.

**3.8 Right to Combine Condominium Units.** Subject to the following provisions, an owner shall have the right to combine a condominium unit with one or more adjoining units provided that the combination is of condominium units as designated on the condominium Floor Plan which are contiguous and are interconnected by interior doors. In that event, the owner shall be considered to be the owner of two or more contiguous condominium units and the appropriate percentage interest in common elements. The connection or combination of condominium units not indicated on the condominium Floor Plan as connected by interior doors shall be permitted only after obtaining the written approval from the Association and any mortgagee of the affected condominium units. A combination of condominium units not connected by interior doors as indicated on the condominium Floor Plan shall become effective only when the owner of the condominium units which are to be combined, executes and records in the office of the county clerk a written statement describing the condominium units to be combined and declaring that the same writing by the Association and any mortgagee of the affected units. In the event of such combination of condominium units, the units of which may be deemed one unit and the undivided interest in general common elements which are appurtenant to the one enlarged unit which results from the building within the new perimeter boundaries of the combined unit shall cease to be general common elements if such part of the building would not have constituted general common elements had the combined units been originally designated on the condominium Floor Plan as a single unit.

**3.9 Partition of a Condominium Unit Prohibited.** Subject to the following provisions, no owner shall partition or subdivide any condominium unit so as to convey to a prospective owner an interest in less than an entire condominium unit; provided, however, that an owner of a condominium unit consisting of two or more condominium units combined pursuant to Article 3.8 hereof may partition and subdivide such condominium unit unto condominium units conforming to the dimensions of the unit depicted in the Condominium Floor Plan. This provision is not intended, however, to prohibit joint or common ownership by two or more persons or entities of a condominium unit.

**3.10 Easements Deemed Appurtenant.** The easements and rights herein created for an owner shall be appurtenant to the condominium unit of that owner and any transfer, assignment, sublease, 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



# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

provided for herein, even though no specific reference to each easements appears in any such instrument.

### ARTICLE 4

#### THE ASSOCIATION

**4.1 General Purposes and Powers.** The Wren Condominium Association 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 general common elements as provided in this Declaration and to further the interests of 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 more than one person or entity, the membership appurtenant to that condominium unit shall be shared by all such persons or entitled in the same proportionate interest and by the same type of ownership as the interest to 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. There shall be three to five members of the Board of Directors, all of whom shall be owners of condominium units elected by 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 shall be entitled to cast votes based on one vote per unit owned. Voting by proxy shall be permitted.

**4.5 Notices.** Except as a greater period is specified in this Declaration, each owner shall be entitled to at least fifteen (15) days' notice of any meetings. Notices at which such owner has the right to vote 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

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 electronically, postage or charges prepaid, addressed to the party. Any notice, information or material shall be deemed properly addressed to an owner if it is addressed to the name and address shown on the Association registered address form to be completed by such 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.

**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 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 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 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 a quorum is established for consideration of a matter, except as 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 5 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 of all condominium units and each of them to manage, control and deal with the interest of such 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

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 General Common Element Maintenance.** The Association shall provide for the care, operation, management, maintenance, repair and replacement of the general common elements. Without limiting the generality of the foregoing, said obligations shall include the keeping of such general common elements in good, clean, attractive and sanitary condition, order and repair; removing snow and any other materials from such general common elements which might impair access to the project or to the unit; keeping the project safe, attractive and desirable; making necessary or desirable alterations, additions, betterments or improvements to or on the general common elements.

**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 or 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 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 the use and benefit of the 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 each owner's 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 general common elements. An assignment of a condominium unit shall transfer to the assignee ownership of the assignor's beneficial interest in such property without the 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 water or other utility system.

**5.6 Prohibition Against Sale, Lease or Rental by Association.** The Association shall have no right or authority to, and is prohibited from engaging in, the sale, lease or rental of a condominium unit or any part thereof; provided, however, that this prohibition shall not

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

affect the right and duty of the Association assessment against a condominium unit and the right to sell, lease or dispose of such condominium unit as provided in this Declaration.

**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 general common elements. Such rules and regulations may without limitation: (i) regulate use of the general and limited common elements to assure equitable use and enjoyment by all persons entitled thereto; (ii) 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 general common elements for exclusive use by owners of particular condominium units.

The Association may suspend any 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 under this Declaration. The Association may also take judicial action against any 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 given or 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 or Mortgages.** 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 shall be obligated to pay and shall pay to the Association amounts assessed to the condominium unit or 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 shall be required to comply with any such determinations.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

**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 of any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration.

There shall be no additions, alterations or improvements of or to the general and limited common elements by the Association requiring an assessment in excess of One Hundred Twenty Dollars (\$120.00) per unit in any one calendar year without prior approval of a majority of the owners. Such approval shall be expressed by a vote in favor thereof by the owners of a majority in interest at a special or regular meeting of Association members. Such expenditure(s) shall be a common expense. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any general or limited common element or common personal property.

**6.3 Apportionment of Assessments.** Assessments shall be apportioned according to the appurtenant percentage undivided interest in the general common elements assigned to a unit. Any separately owned non-dwelling shall be assessed at a rate as determined by the Board of Directors.

**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 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 in 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 expenditures 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, shall become due and payable twenty (20) days after notice of such amount shall have been given by the Association to such owner, or at such later time as may

Recording (Date - Time): 09/1/16 - 01:13:36 PM  
COLFAX COUNTY, NM - Rebecca Hoy - County Clerk  
DOC# 201602520

PAGE: 13 of 31

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

be specified by the Association. Any such amount shall bear interest at the rate of twelve (12) percent per annum from the date due and payable.

**6.6 Lien for Assessments and Other Amounts.** The Association shall have the right to place a lien against each condominium unit to secure payment of any assessment or other amount due and owing to the Association with respect to the owner 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 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 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 in 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 Encumbrancers.**

6.7.1 The amount of any assessment payable with respect to any owner shall be a joint and several obligations 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 part'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

Recording (Date - Time): 09/11/16 - 01:13:36 PM  
COL FAX COUNTY, NM - Rebecca Hoy - County Clerk  
DOC# 201602520

PAGE: 14 of 31

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 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 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 or 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 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 of the condominium unit and the amount 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.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### 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 accommodate 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.

**7.2 Common Elements Restrictions.** All use and occupancy of general common elements shall be subject to and governed by rules and regulations of the Association. No owner and no owner's guests shall obstruct, damage or commit waste to any of the general common elements. No owner and no owner's guests shall change, alter or repair or store anything in or on any of the limited or general common elements 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 or keep 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 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 any part of the project. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in any of the general common elements, nothing shall be hung or placed upon any of the general or limited common elements, 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



# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 property except as noted below:

1. Condo owners should be allowed to have a pet on property
2. NO guest pets allowed unless the condo owner is present.
3. Condo owner is responsible for any pet housed at their condo.
4. NO renter is allowed to have pets on property. It is the condo owners' responsibility to enforce this when/if notified by the HOA/Property Manager.

**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 Maintenance of Condominium Unit.** Each condominium unit and all improvements, fixtures and furniture and equipment therein shall be kept and maintained by the owner thereof in a clean, safe, attractive and slightly condition and in good repair. No structural alterations within any condominium unit shall be made and no electrical, plumbing or similar work within any condominium unit shall be done without the prior written consent of the Association. Determinations with respect to whether or not a particular activity or occurrences shall constitute a violation of this Article 7.9 shall be made by the Board of Directors of the Association and shall be final.

**7.10 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 the condominium units, the use of general 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.

**7.11 Owner Caused Damage.** If, due to the act or neglect 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 or subrogation against such owner. The amount of such loss or damage may be collected by the owner, by legal proceedings or otherwise, and such amount shall be secured by a lien on the condominium units of such owner as provided in Article 6 of this Declaration for assessments or other charges.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### 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 lease 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 as 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 canceled, invalidates or suspended on account of the conduct of the Association, its officers, directors, employees and agent 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 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, canceled or substantially modified without at least 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 each mortgagee.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

The costs 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 general common elements appurtenant to his unit.

**8.2 Casualty Insurance.** The Association shall obtain and maintain casualty insurance covering the project and each condominium unit covering loss or 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 such limits as reasonably determined by the Board of Directors. 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.

**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 insurance covering personal liability, property damage liability of the Association, its officers, directors, employees, agents and guests arising in connection with ownership, operation, maintenance, occupancy or use of the project or of any condominium units 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.

**8.4 Workers' Compensation and Employer's Liability Insurance.** The Association shall obtain and maintain Workers' 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.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

**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 are legally or equitably entitled thereto; and third, the balance, if any, to owners in proportion to their respective interests in the general common elements.

**8.7 Other Insurance by the Association.** The Association shall also have the power of 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.

## 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 general and limited common elements. All of the 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 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 general and limited common elements 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, 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 attorney-in-fact, to

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

such restoration, and the improvement(s) 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 the 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, 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 proportions, the condominium units owners may appoint their first mortgagees, if any, as their proxy to vote on said proposition, or as a part of the first mortgage instrument may grant the first mortgagee the irrevocable power to vote on said proposition, 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 instead 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 general common elements assigned to the condominium unit of each owner, and shall be due and payable within thirty 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 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 expense 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 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;

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

- 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 to their priority; and
- f. The balance remaining, if any, shall be paid to the condominium unit owner.

**9.3 Sale of the Property.** In the event all of the buildings and improvements on the property are damaged or destroyed, the unit 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 the 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 prorate to the units owners sustaining loss or damage.

## ARTICLE 10

### MISCELLANEOUS

**10.1 Duration of Declaration.** If any court or other decision-maker of competent jurisdiction determines that any of the covenants contained in this Agreement including, without limitation, any of the Restrictive Covenants, or any part thereof, is unenforceable because of the duration or geographical scope of such provision, then, after such determination has become final and unappealable, the duration or scope of such provision, as in the case may be, shall be reduced so that such provision becomes enforceable.

**10.2 Revocation or Amendment.** Except as is 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 general common elements 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 general common elements appurtenant to each unit shall have a permanent character and shall not be altered without the consent of all the unit owners, and all of the holders of any recorded mortgage or deed of trust as expressed in an amended Declaration duly recorded.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

**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 exemption 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 or 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, for itself, its successors and assignees, 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 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 general common elements. 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 in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' 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

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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 By-Laws and provided, further, that such junior mortgagee upon written request of the 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 Liability; Indemnification.** The Association shall indemnify 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. Indemnification shall be made from assets of the Association, and no owner shall be personally liable to any indemnitee.

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

### **10.8 General.**

10.8.1 This Declaration shall be binding upon 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.

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

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

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



# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

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

### ARTICLE 11

#### AGENT FOR SERVICE OF PROCESS

11.1 The Agent for Service of Process is the Managing Agent at that time.

IN WITNESS WHEREOF, The Board of Directors of the Wren Condominium Association has executed the Declaration this 30<sup>th</sup> day of Aug 2016.

William H. Bowman  
William H. Bowman, President

Joe Accord  
Joe Accord, Director  
Accord

Tracy Jones  
Tracy Jones, Director  
Richard Keady  
Richard Keady, Director

Kimberly Lewis

STATE OF NEW MEXICO

COUNTY OF Colfax

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of Aug 2016 by  
William H. Bowman, Tracy Jones, Joe Accord,  
Richard Keady, Kimberly Lewis



OFFICIAL SEAL  
PAMELA PRINDLE  
NOTARY PUBLIC, State of New Mexico  
My Commission Expires 3-20-18

Pamela Prindle  
NOTARY PUBLIC

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### EXHIBIT 1

#### TO AMENDED CONDOMINIUM DECLARATION

#### FOR THE WREN

A tract of land located in Angel Fire, Colfax County, New Mexico, more particularly described as follows:

BEGINNING at the northwest corner, marked by a stake common to Lots 2 and 3, Block E, Angel Fire Village Unit 2, as recorded in Book 4, Plats, at page 22, Records of Colfax County, New Mexico; thence along the common line between Lots 3 and 4 N.  $43^{\circ}13'22''$ E., 197.85 feet to the northeast corner; thence S.  $46^{\circ}46'38''$ E, 89.85 feet to a point; thence S.  $31^{\circ}26'38''$ E., 29.83 feet to the southeast corner; thence S.  $47^{\circ}23'05''$ W., 190.93 feet to the southwest corner; thence on a curve to the left with an arc length of 12.97 feet and a radius of 178.57 feet to a point; thence N.  $46'38''$ W., 91.81 feet to the point and place of beginning.

Also described as Lot 4, Block E, Angel Fire Village Unit 2 and more particularly shown on the plat of survey prepared by Sheilds Survey Company dated December 1977 as amended on January 9, 1978.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### EXHIBIT 1A

## TO AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

A tract of land located in Angel Fire, Colfax County, New Mexico, and more particularly described as follows:

BEGINNING at a point marked with an iron pin known as the property line corner common to Lots 2 and 3, Block E, and Jackson Hole Road in the Angel Fire Village Unit 2 recorded in Colfax County, New Mexico in Plat Book 4 at page 22; thence N.  $43^{\circ} 10'$  E., 197.80 feet to a point, the northeast corner; thence S.  $43^{\circ} 50'$  E., 110.11 feet to a point, the southeast corner; hence S.  $43^{\circ} 10'W.$ , 197.80 feet to a point, the southwest corner; thence N.  $46^{\circ} 50'$  E., 110.111 feet to the point and place of beginning.

Excepting that portion of the property previously submitted to Condominium Declaration for the Wren recorded in Book 78 Misc. at page 469, Records of Colfax County, New Mexico.

Also described as part of Lot 3, Block E, Angel Fire Village Unit 2 as more particularly described on that plat of survey prepared by Engineering Design Associates dated March 22, 1974.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### EXHIBIT 2

#### TO AMENDED CONDOMINIUM DECLARATION

#### FOR THE WREN

A tract of land located in Angel Fire, Colfax County, New Mexico, more particularly described as follows:

Commencing at the point known as the property line corner common to Lots 2 and 3 in block E marked with an iron pin and Jackson Hole Road in the Angel Fire Village Unit 2 Subdivision recorded in Colfax County, New Mexico, in Plat Book 4 at Page 22.

Thence, S. 46° 50' E., 17.00 feet to the point of beginning, to be referred to herein as the most westernly corner of the property herein described. Thence, N. 43° 10' E., 107.00 feet to the most northerly corner of the property herein described. Thence, S. 43° 10' W., 107.00 feet to the most southerly corner of the property herein described. Thence, N. 46° 50' W., 85.00 feet returning to the point described above as the most westernly corner of the property herein described containing 0.2088 acres more or less. Thence, N. 46° 50' W., 17.00 feet to the true point of commencement.

Together with an easement for ingress, egress and parking over the northerly 17.00 feet and the easterly 85.10 feet of Lot 3.

Also described as part of Lot 3, Block E, Angel Fire Village Unit 2 as more particularly described on that plat of survey prepared by Engineering Design Associates dated March 22, 1974.

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

### EXHIBIT 3 (REVISED & UPDATED)

## AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN CONDOMINIUMS

This amended Exhibit 3 replaces and supersedes the existing Exhibit 3 in its entirety.

<u>UNIT NO.</u>	<u>BUILDING</u>	<u>OLD PERCENTAGE INTEREST</u>	<u>NEW PERCENTAGE INTEREST</u>
101	A	3.62%	3.56%
102	A	2.73	2.67
103	A	2.73	2.67
104	A	2.73	2.67
105	A	3.68	3.62
106	B	3.88	3.82
107	B	3.88	3.82
108	B	3.88	3.82
109	B	3.88	3.82
110	B	.24	.24
111*	A	*	1.87
201	A	3.73	3.67
202	A	2.82	2.76
203	A	2.82	2.76
204	A	2.82	2.76
205	A	3.92	3.86
206	B	4.01	3.95
207	B	4.01	3.95
208	B	4.01	3.95
209	B	4.01	3.95

# AMENDED CONDOMINIUM DECLARATION

## FOR THE WREN

210	B	2.74	2.68
-----	---	------	------

<u>UNIT NO.</u>	<u>BUILDING</u>	<u>OLD PERCENTAGE INTEREST</u>	<u>NEW PERCENTAGE INTEREST</u>
301	A	3.82	3.76
302	A	3.01	2.95
304	A	5.74	5.68
305	A	4.02	3.96
306	B	4.15	4.09
307	B	3.15	3.09
308	B	5.82	5.76
309	B	4.15	4.09

Total:	100.00%	100.00%
--------	---------	---------

\* Unit No. 111 (formerly common space) added as a residential unit effective 11/17/2015.

The New Percentage Interests reflects the addition of Unit No. 111; effectively reducing existing units original percentage interests.

Limited common areas are the balconies, the use of which is reserved to the units to which the balconies are appurtenant.

Both buildings are three stories. Units 101 to 111 are on the ground floor; units 201 to 210 are on the second floor; and units 301 to 309 are on the third floor.

AMENDED CONDOMINIUM DECLARATION

FOR THE WREN

EXHIBIT 4

TO AMENDED CONDOMINIUM DECLARATION

FOR THE WREN

The Floor Plans of Building A, The Wren, a Condominium, have been filed in the office of the Colfax County Clerk on October 15 1974, New Mexico Building Unit Ownership Act.

The Floor Plans of Building B, The Wren, a Condominium, have been filed in the office of the Colfax County Clerk on \_\_\_\_\_, 1978, in \_\_\_\_\_ as required by the provisions of the New Mexico Building Unit Ownership Act.