

**Condominium Declaration
for
Gold Dust Condominium**

**Article 1
Submission; Defined Terms**

Section 1.1 **Submission of Property.** The Baxley Corporation, a New Mexico corporation, owner of the real property lying and being situate at Lot 2, Angel Fire Village Unit 2, Block F, Colfax County, New Mexico, submits the real property, together with all easements, rights and appurtenances thereto ("Property") to the provisions of New Mexico Laws 1982, Chapter 27 (Chapter 47, Articles 7A, 7B, 7C and 7D, N.M.S.A. 1978), known as the New Mexico Condominium Act ("Condominium Act" or "the Act"), and creates a Condominium with respect to the Property to be known as Gold Dust Condominium, ("Condominium").

Section 1.2 **Defined Terms.**

- **Association:** Gold Dust Condominium Association, a New Mexico non-profit corporation.
- **Board of Directors:** the Board of Directors of the Association.
- **Bylaws:** Bylaws of the Association filed with the New Mexico State Corporation Commission.
- **Eligible Mortgagee:** the holder of a first Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Unit. The notice must include the Unit number on which it has a Security Interest.
- **Reserved Common Element:** a portion of the Common Elements designated by the Board of Directors for the exclusive use of one or more but fewer than all the Units, pursuant to Section 47-7C-2, N.M.S.A. 1978.
- Terms not otherwise defined herein or in the Plat, Plan, Exhibits, or Bylaws, or in any amendment hereto, shall have the meanings specified in Section 47-7A-3 of the Condominium Act.

Article 2

Building on the Property; Unit Boundaries

Section 2.1 The Building.

The location, dimensions and area of the building on the Property are depicted on Exhibit "A" ("Plat and Plan").

Section 2.2 Units.

The location of Units and any Limited Common Elements allocated exclusively to each Unit are shown on the "Plat and Plan" attached as Exhibit "A" hereto. Attached as Exhibit "B" hereto is a list of all Units, their identifying letters, location, size (all as shown more fully on the Plat and Plan), and the undivided percentage interest of each Unit Owner in the Common Elements and Common Expenses ("Percentage Interest") appurtenant to each Unit determined on the basis of size. The "size" of each Unit is the total number of interior square feet determined by reference to the dimensions shown on the Plat and Plan. The percentage ownership interest in the Common Elements and liability for common expenses allocated to each Unit is the ratio of the size of the Unit to the size of all Units in the Condominium, expressed as a decimal fraction. Each Unit is allotted one vote in the Association. The number of Units created hereby is twenty-one (21).

Section 2.3 Unit Boundaries.

Each Unit consists of the space within the walls, floors and ceilings of that Unit.

Section 2.4 Maintenance Responsibilities.

Each Unit Owner shall be responsible for the maintenance and repair of his Unit, and shall maintain the Limited Common Elements appurtenant thereto in a neat and orderly condition. Should the Board of Directors determine that any Unit Owner has neglected properly to maintain or to repair any Limited Common Element appurtenant to his Unit, the Board may provide exterior maintenance upon such Limited Common Element as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, retaining walls and other exterior improvements.

Section 2.5 Common Expenses Attributable to Fewer than all Units.

Any Common Expense associated with the maintenance, repair or replacement of components attached to, planted on, or a part of any Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among

the Units to which it is assigned.

Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.

Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit.

Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

Article 3

Restriction on Units and Common Elements

Section 3.1 Designation of Reserved Common Elements.

The Board of Directors shall have the power in their discretion to designate from time to time certain Common Elements as "Reserved Common Elements" and grant reserved rights to any or less than all of the Unit Owners. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

Section 3.2 Use Restrictions.

Subject to the Special Declarant Rights reserved under Article 8, the following use restrictions apply to all Units and to the Common Elements:

- The use of each Unit is restricted to that of a single family residence and accessory uses as permitted herein. Except for those activities conducted as a part of the marketing and development program of the Declarant, no industry, business, trade or commercial activity, other than home professional pursuits without employees, public visits or nonresidential storage, mail, or other use of a Unit, shall be conducted, maintained or permitted in any part of a Unit.
- No immoral, improper, offensive or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations. A violating

Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

Section 3.3 Occupancy Restrictions.

Subject to the Special Declarant Rights reserved under Article 8, the following occupancy restrictions apply to all Units and to the Common Elements:

- No electrical device creating electrical overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.
- Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash will be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.
- All fixtures and equipment will be used for the purposes for which they were designed.
- No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors, tenants and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or occupants. No Unit Owner or occupant shall cause noise or play, or suffer to be played, any musical instrument or operate or suffer to be operated a phonograph, television set, radio or similar device at such high volume or in such other manner that it shall cause unreasonable disturbance to other Unit Owners or occupants.

- No animal, bird or reptile of any kind shall be raised, bred, or kept in a Unit, except for one dog, two cats, or other household pets approved and licensed by the Board of Directors or the Manager as to compatibility with the Condominium. Pets may not be kept, bred or maintained for any commercial purpose. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three (3) days written notice following Notice and Hearing from the Board of Directors. The owner shall hold the Association harmless from any claim resulting from any action of his or her pet. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity. The provisions of this section shall not apply to dogs kept by personnel manning the entrance gate, or to those kept by any security contractor or employee of the Association, as to which approval of the Board of Directors must be obtained.
- All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the Unit Owner.
- No sign, window display or advertising visible from outside a Unit (except for a name plate or sign not exceeding nine square inches in area, on the main door to each Unit) shall be maintained or permitted in any part of a Unit, except with the written permission of the Board of Directors.

Section 3.4 Restrictions on Alienation.

No Unit may be conveyed pursuant to a timesharing plan, as defined by the New Mexico Timeshare Act.

Article 4 Easements

Section 4.1 Easement for Ingress and Egress Through Common Elements and Access to Units.

(a) Each Unit Owner in common with each other Unit Owner is hereby granted a non-exclusive easement appurtenant to each Unit for ingress and egress through all

Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Unit Owners' Association.

(b) Declarant reserves in favor of Declarant and the managing agent and/or any other person authorized by the Board of Directors the right of access to any Unit as provided in Section 47-7C-7 of the Condominium Act. In case of emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

Article 5

Amendment of Declaration

Section 5.1 Other than any amendment of the Declaration by the Declarant under its reserved Special Declarant Rights, no amendment of this Declaration may be made by the Association or the Unit Owners without the prior written approval of the institutional lender or lenders holding two-thirds (2/3) of the first mortgages encumbering Condominium Units ("Mortgagees") where such amendment: (a) changes the Percentage Interest or obligations of any Unit; (b) subdivides, partitions or relocates the boundaries of any Unit encumbered by a mortgage to a Mortgagee or the Common Elements; or (c) except as otherwise provided by the Amended Declaration, Bylaws or the Condominium Act, withdraws the submission of the Property to the Condominium Act.

Section 5.2 Other than any amendment of the Declaration by the Declarant under its reserved Special Declarant Rights, this Declaration may be amended only by a vote of the Owners of Units to which at least seventy percent (70%) of the votes in the Association are allocated.

Section 5.3 No amendment to this Declaration which purports to decrease, modify or otherwise limit the Special Declarant Rights described in Article VIII hereof shall be valid unless written consent of the Declarant is endorsed thereon prior to the recording of such amendment.

Article 6

Priority of Mortgages

Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to the Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such Mortgage secures a loan made by an institutional lender; and provided, further, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Unit at such sale from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be

enforced in the same manner as provided herein.

Article 7 Special Declarant Rights

Section 7.1 **Declarant Control of the Association.** Pursuant to Section 47-7C-3 of the Condominium Act, Declarant reserves the right to appoint the officers and members of the Board of Directors of the Association during the maximum period allowed by Subsections D and E of Section 47-7C-3, subject to the provisions of Section 47-7C-3(E).

Section 7.2 **Use for Sales Purposes.** All Units shall be subject to the statutory right in favor of Declarant provided in Section 47-7B-15 of the Condominium Act. Declarant reserves the right to use any Units owned by Declarant as models, management offices or sales offices until such time as Declarant conveys title thereto to Unit Owners. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

Article 8 Taxation

Each Unit shall be deemed a separate parcel for tax purposes, and shall be separately assessed.

Article 9 Substantial Completion

It is hereby certified that the structural and mechanical systems of all buildings containing units, and all units hereby created, have been substantially completed in accordance with the plans.

In witness whereof, Declarant has executed this Declaration this day of April, 1992.

The Baxley Corporation, A New Mexico Corporation

By _____
Roy S. Baxley, President

State of Texas)

County of Henderson)

The foregoing document was acknowledged before me by Roy S. Baxley, president of The Baxley Corporation, a New Mexico corporation, for and on behalf of said corporation, this day of April, 1992.

Notary Public

My Commission Expires:

Unit	Size (ft ²)	Allocated Interest
A1	977	4.4893%
A2	1066	4.8982%
A3	1066	4.8982%
B1	977	4.4893%
B2	1066	4.8982%
B3	1066	4.8982%
C1	977	4.4893%
C2	1066	4.8982%
C3	1066	4.8982%
D1	977	4.4893%
D2	1066	4.8982%
D3	1066	4.8982%
E1	977	4.4893%
E2	1066	4.8982%
E3	1066	4.8982%
F1	977	4.4893%
F2	1066	4.8982%
F3	1066	4.8982%
G1	977	4.4893%
G2	1066	4.8982%
G3	1066	4.8982%
Total	21763	100.0000%

Exhibit B

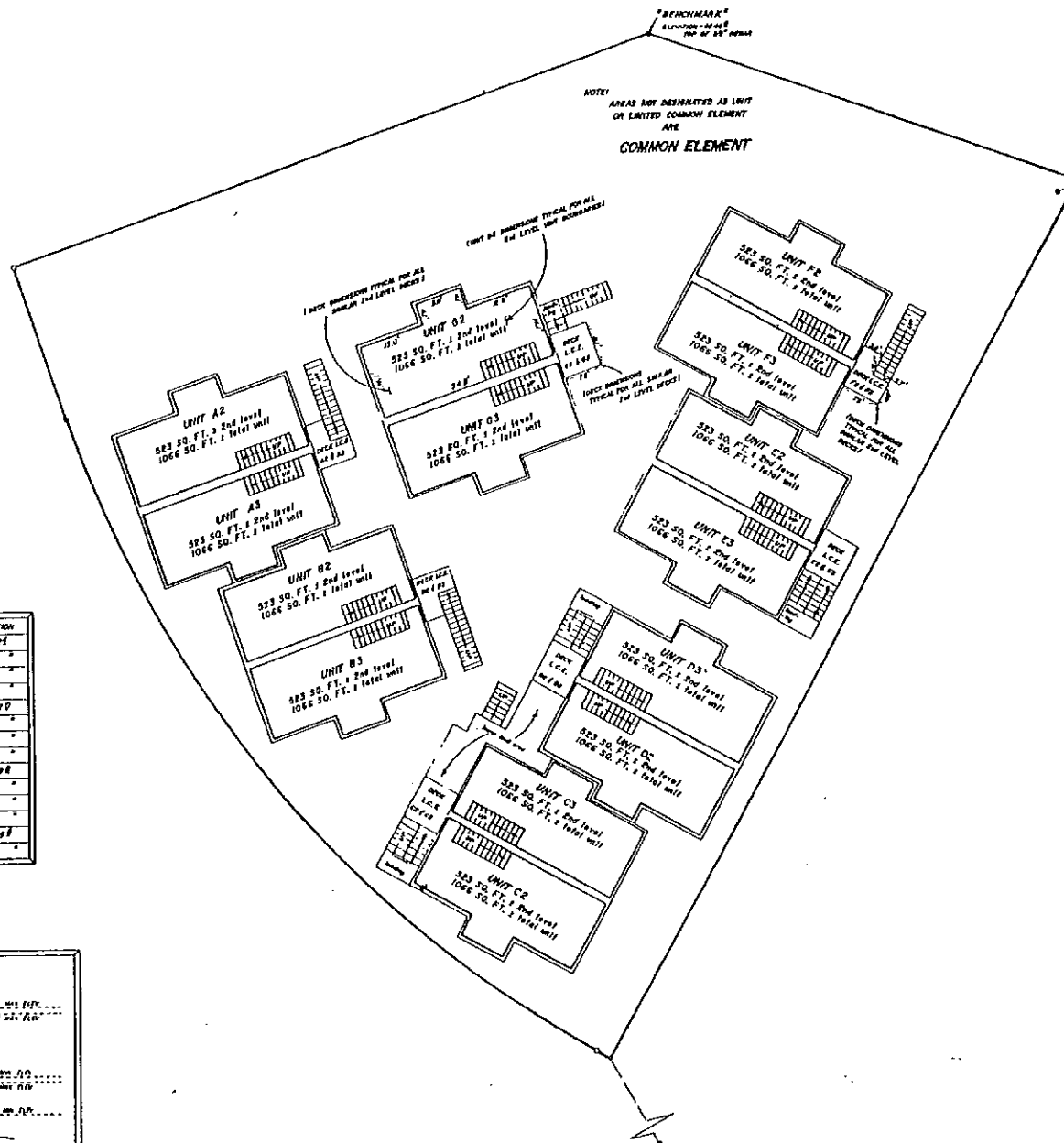
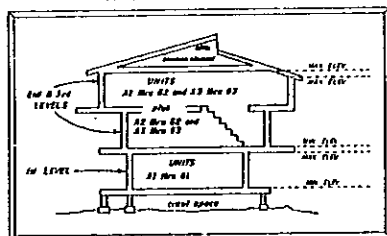
GOLD DUST CONDOMINIUM 2nd LEVEL PLANS



UNIT ELEVATION CHART

UNIT	MINIMUM ELEVATION	MAXIMUM ELEVATION
A2	8345	8361 in 8367
A3		
B2		
B3		
C2	8350	8367 in 8373
C3		
D2		
D3		
E2	8358	8375 in 8381
E3		
F2		
F3		
G2	8348	8365 in 8371
G3		

TYPICAL VERTICAL PROFILE



NOTES:

1. FOR FURTHER DATA REFER TO "PLAN OF SURVEY AND SOIL TEST REPORT" BY WILLIAM H. HARRIS, P.E., L.S., AND THE EXISTING AND EXISTING PLAN AND PLAT OF THIS SUBDIVISION.
2. UNIT SEPARATION IS BY INTERIOR AND EXTERIOR PARTITION WALLS, ETC.
3. L.C.E. INDICATES LIMITED COMMON ELEMENT.
4. ELEVATION MEASUREMENTS ARE TO THE TOP OF EACH FLOOR AS SHOWN ON PLAN BY NOTE NO. 1 AND NOT TO THE TOP OF EACH FLOOR.
5. ALL UNITS ARE TO BE CONSTRUCTED TO MEET THE REQUIREMENTS OF THE CITY OF SANTA FE, NEW MEXICO, AS SHOWN ON THIS PLAN.
6. IMPROVEMENTS TO BE DONE AS SHOWN ON THIS PLAN.
7. THE UNIT FLOOR ARE 2ND LEVEL PLANS, SHEET 2-1-10.

CERTIFICATE

I, the undersigned, being a duly qualified and licensed Surveyor in the State of New Mexico, do hereby certify that the above is a true and correct copy of the 2nd level plans of the Gold Dust Condominium, as shown on the plan of survey and soil test report by William H. Harris, P.E., L.S., and the existing and existing plan and plat of this subdivision.

William H. Harris
WILLIAM H. HARRIS, P.E., L.S.
Surveyor

DATE OF MEASUREMENT: 10/10/10

THE FURTHER ATTACHMENT AND REVISIONS BEING BY:

BY: *John A. Harris*
JOHN A. HARRIS, P.E., L.S.
Surveyor

AT CORNER CORNER: 2-1-10

DATE OF MEASUREMENT: 10/10/10

THE FURTHER ATTACHMENT AND REVISIONS BEING BY:

BY: *John A. Harris*
JOHN A. HARRIS, P.E., L.S.
Surveyor

AT CORNER CORNER: 2-1-10

DATE OF MEASUREMENT: 10/10/10

THE FURTHER ATTACHMENT AND REVISIONS BEING BY:

BY: *John A. Harris*
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Surveyor

AT CORNER CORNER: 2-1-10

DATE OF MEASUREMENT: 10/10/10

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Surveyor

AT CORNER CORNER: 2-1-10

DATE OF MEASUREMENT: 10/10/10

THE FURTHER ATTACHMENT AND REVISIONS BEING BY:

BY: *John A. Harris*
JOHN A. HARRIS, P.E., L.S.
Surveyor

AT CORNER CORNER: 2-1-10

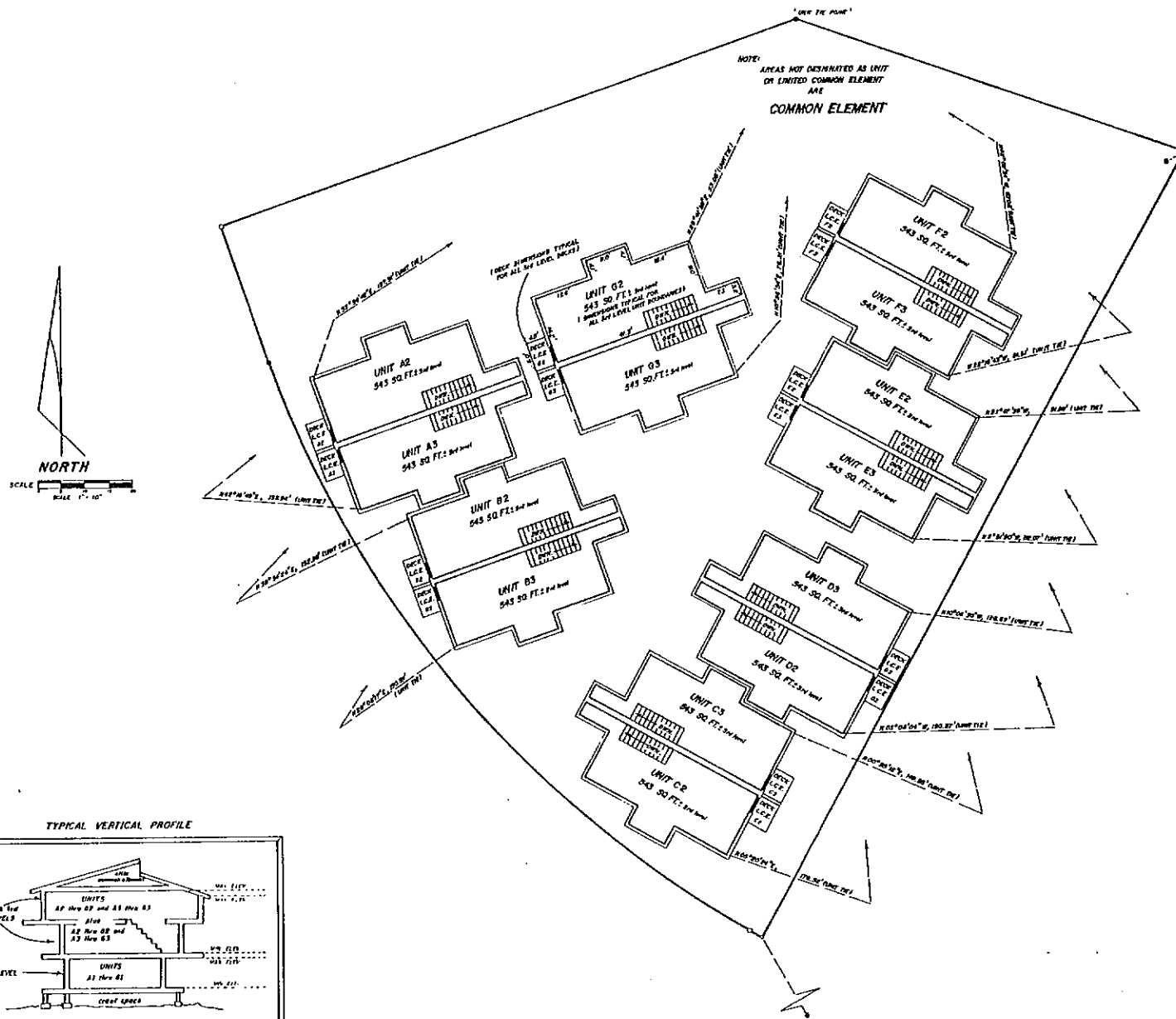
DATE OF MEASUREMENT: 10/10/10

THE FURTHER ATTACHMENT AND REVISIONS BEING BY:

BY: *John A. Harris*
JOHN A. HARRIS, P.E., L.S.
Surveyor



GOLD DUST CONDOMINIUM
3rd LEVEL PLANS



NOTES:

1. FOR PURPOSES DATA REFER TO "PLAN OF SURVEY FOR GOLD BUTTE CONCENTRATION" BY PATRICK E. WOODMAN, JR., P.E., D-100, DATED 11-1-67, AND TO "PLAN OF SURVEY FOR GOLD BUTTE AREA" BY WILMA A. PLATT OF THIS BUREAU.
2. LAST VERTICAL LINE IS INTERIOR AND ENCLOSED INTERIOR PARTITION WALLS, ETC.
3. L.O.C. SHOWN FOR LIMITED COMMON ELEMENT.
4. ELEVATION BENCHMARK 1016.6, TYPE OF 12" IRON ANGLE AS SHOWN ON "PLAN OF SURVEY FOR GOLD BUTTE AREA" OF DATE PLAT.
5. ALL UNITS ARE IN HUNDREDTHS OF FEET OR INCHES OR FEET SQUARED AS PER PLAN OF NOTE NO. 3.
6. IMPROVEMENTS ARE SHOWN CURRENT AS OF DATE THIS PLAT.
7. FOR LAST VERTICAL LINE SEE 2ND LEVEL PLANS, SHEET 2-118A.

CERTIFICATE

THESE OFFERS HAVE BEEN MADE AND ARE BEING HELD TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND AN ACCURATE COPY OF A FIELD REPORT COMPLETED BY ME ON BASIS OF INFORMATION ON AFRICA AND THE WEST AFRICAN STATES FOR PROFESSIONAL, EDUCATIONAL, RESEARCH AND NEWSPAPER, AND THAT IN CONCORDANCE WITH INFORMATION REQUIRED BY SECTION 47-22, P. 2, PUBLIC LAW 803

Richard K. Wynn
NMP 6 N 4732 MICEL F 50096

LIST OF AWARDERS

THE ATTORNEY GENERAL HAS ACKNOWLEDGED MY LETTER OF
MAY 1970 BY 17 MARCH 1971

BY ATTORNEY AT LAW

John M. Moseley

CM (UNITED STATES) 24-24

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1. PERSONAL INFORMATION

1 COURT CHIEF THAT THIS PLAN WAS ADOPTED ON
MARCH 12, 1912 TO SUCH IMPROVEMENTS TO DATE.
CHIEF OF THE JURY AND CHIEF OF THE JURY
CHIEF OF THE JURY.

Khalid Khan



Southwest Mountain Surveys
1114 HICKOX ST. SANTA FE, N.M. 87505
(505) 942-9429 Fax: (505) 942-9429

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of
Gold Dust Condominium Association**

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Article 1 General Provisions

Section 1.1 Applicability.

These Bylaws provide for governance of the Condominium pursuant to the requirements of Section 47-7C-6 of the Condominium Act. The Property, located in Colfax County, and more particularly described in the Declaration, has been submitted to the provisions of the Condominium Act by recordation of the Amended and Restated Declaration among the land records of Colfax County in Book ___ at pages _____.

Section 1.2 Compliance.

Pursuant to the provisions of Section 47-7C-2 of the Condominium Act, every Unit Owner and all those entitled to occupy a Unit shall comply with these Bylaws.

Section 1.3 Office.

The office of the Condominium, the Association, and the Board of Directors shall be located at the Property or at such other place as may be designated from time to time by the Board of Directors.

Section 1.4 Defined Terms.

Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration creating this Condominium or, if not defined therein, the meanings specified for such terms in Section 47-7A-3 of the New Mexico Condominium Act. References to "Condominium Act" or "the Act" mean the New Mexico Condominium Act, Laws 1982, Chapter 27, being Section 47-7A-1 et seq, N.M.S.A., 1978 Comp.

Article 2 Unit Owners' Association

Section 2.1 Composition.

The Association shall consist of a New Mexico Nonprofit corporation. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Association by the Condominium Act and the Declaration. Except as to those matters which the Condominium Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors or Managing Agent as more particularly set forth in Article III of these Bylaws.

Section 2.2 Membership.

Ownership of a Unit is required in order to qualify for membership in the Association. Any person on becoming an owner of a Unit shall automatically become a Member of the Association and be subject to these Bylaws.

Section 2.3 Place of Meeting.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

Section 2.4 Annual Meetings.

An annual meeting of the Association shall be held during the month of July, at a time and place designated by the Board of Directors. At such annual meetings the Board of Directors shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 3.4 of these Bylaws.

Section 2.5 Special Meetings.

The President shall call a special meeting of the Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Unit Owners of not less than twenty percent (20%) of the Unit Owners. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

On the earlier of (1) a day within one hundred eighty (180) days after deeds of conveyance of Units representing ninety percent (90%) or more of the Units which may be created pursuant to the Declaration shall have been delivered to Unit Owners by the Declarant or (2) the expiration of the maximum time permitted by Section 47-7C-3 of the Condominium Act, or (3) thirty (30) days after written notice by Declarant, a special meeting of the Association shall be held at which time all of the members of the Board of Directors designated by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Board of Directors to act in the place and stead of those resigning.

Section 2.6 Notice of Meetings.

The Secretary shall mail to each Unit Owner a notice of each meeting of the Association at least ten (10) days but not more than sixty (60) days prior to such meeting, stating the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a Director or officer. The mailing of a notice of meeting in the manner provided in this Section and Section 9.1 of these Bylaws shall be considered service of notice.

Section 2.7 Adjournment of Meetings.

If at any meeting of the Association a quorum is not present, a majority of the Unit Owners who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting was called.

Section 2.8 Voting.

The vote to which each Unit Owner is entitled shall be the voting interest assigned to his Unit in the Declaration. Where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the person named in a certificate executed by all of the Owners of such Unit and filed with the Secretary or, in the absence of such named person from the meeting, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in

accordance with the agreement of a majority of them pursuant to Section 47-7C-10 of the Condominium Act. Such certificate shall be valid until revoked by a subsequent certificate similarly executed.

Subject to the requirements of Section 47-7C-10 of the Condominium Act, wherever the approval or disapproval of a Unit Owner is required by the Condominium Act, the Declaration or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Unit at any meeting of the Association. Except where a greater number is required by the Condominium Act, the Declaration or these Bylaws, a majority of the Unit Owners entitled to cast fifty percent (50%) or more of the votes in the Association, present, in person or by proxy, at one time at a duly convened meeting at which a quorum is present, is required to adopt decisions at any meeting of the Association.

If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes allocated to such Unit or Units.

No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors, if the Association holds a lien against his Unit and the amount necessary to release such lien has not been paid at the time of such meeting or election.

No vote allocated to a Unit owned by the Association may be cast.

Section 2.9 Proxies.

A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of only another Unit Owner, an Eligible Mortgagee or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Unit. No proxy shall in any event be valid for a period in excess of one hundred eighty (180) days after the execution thereof.

Section 2.10 Quorum.

Except as otherwise provided in these Bylaws, the presence in person or by proxy of Unit Owners entitled to cast twenty percent (20%) or more of the votes in the Association shall constitute a quorum at all meetings of the Association.

Section 2.11 Conduct of Meetings.

The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The President may appoint a person to serve as parliamentarian at any meeting of the Association. The then-current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these Bylaws or the Condominium Act. All votes shall be tallied by tellers appointed by the President.

Article 3
Board of Directors

Section 3.1 Number and Qualification.

The affairs of the Association shall be governed by a Board of Directors. The Board of Directors shall be composed of three (3) persons, all of whom shall be Unit Owners or spouses of Unit Owners, Eligible Mortgagees (or designees of Eligible Mortgagees) or designees of the Declarant. Until deeds of conveyance representing more than ninety percent (90%) of the Units which may be created pursuant to the Declaration shall have been delivered to Unit Owners by the Declarant, and thereafter until their successors shall have been elected by the Unit Owners, the Board of Directors shall consist of such persons as may be designated by the Declarant. At least one of the persons so appointed shall be a Member not affiliated with Declarant. The Declarant shall have the right in its sole discretion to replace such Directors as may be so designated, and to designate their successors.

Section 3.2 Powers and Duties.

The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by the Condominium Act, the Declaration or by these Bylaws required to be exercised and done by the Unit Owners. The Board of Directors shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the benefit and enjoyment of the Condominium. Such Rules and Regulations shall not be in conflict with the Condominium Act, the Declaration or these Bylaws. The Board of Directors shall delegate to one of its members, or to a person employed for such purpose, the authority to act on behalf of the Board of Directors on such matters relating to the duties of the Managing Agent (as defined in Section 3.3 of these Bylaws), if any, which may arise between meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall on behalf of the Association:

- (a) Prepare an annual budget, in which there shall be established the assessments of each Unit Owner for the Common Expenses pursuant to Article V, herein.
- (b) Make assessments against Unit Owners to defray the costs and expenses of the Condominium, establish the means and methods of collecting such assessments from the Unit Owners and establish the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Unit Owner for his proportionate share of the Common Expenses shall be payable in equal quarterly installments, each such installment to be due and payable in advance on the first day of each month for such quarter.
- (c) Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Condominium.
- (d) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements and provide services for the Property and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment and supplies to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

- (e) Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Property.
- (f) Make and amend the Rules and Regulations.
- (g) Open bank accounts on behalf of the Association and designate the signatories thereon.
- (h) Make, or contract for the making of, repairs, additions and improvements to or alterations of the Property, and repairs to and restoration of the Property, in accordance with the Condominium Act, the Declaration and these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (i) Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations and act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding.
- (j) Obtain and carry insurance against casualties and liabilities, as provided in Article VI of these Bylaws, pay the premiums therefor and adjust and settle any claims thereunder.
- (k) Pay the cost of all authorized services rendered to the Association and not billed to Unit Owners of individual Units or otherwise provided for in Sections 5.1 and 5.2 of these Bylaws.
- (l) Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the expenses of maintenance and repair of the Common Elements and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the Unit Owners, their duly authorized agents or attorneys, during general business hours on working days at the time and in the manner set and announced by the Board of Directors for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with accepted accounting practices.
- (m) Notify an Eligible Mortgagee of any default hereunder by the Unit Owner of the Unit subject to such Mortgage, in the event such default continues for a period exceeding one hundred eighty (180) days.
- (n) Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements. The consent of at least two thirds (2/3) in number and in Percentage Interest of all Unit Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required to borrow any sum in excess of Ten Thousand Dollars (\$10,000.00). If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this paragraph is not repaid by the Association, a Unit Owner who pays to the creditor such proportion thereof as his Percentage Interest bears to the total Percentage Interests in the Condominium shall be entitled to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such Unit Owner's Condominium Unit.

- (o) Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association.
- (p) In its sole discretion, designate from time to time certain Common Elements as "Reserved Common Elements" and impose such restrictions and conditions on the use thereof as the Board of Directors deems appropriate.
- (q) Furnish the statement required by Section 47-7D-9 of the Condominium Act, within ten (10) working days after the receipt of a written request therefor from any Unit Owners substantially in the form set forth on Exhibit "A" to these Bylaws and designated "Resale Certificate."
- (r) File all required governmental reports.
- (s) Do such other things and acts not inconsistent with the Condominium Act, the Declaration or these Bylaws which the Board of Directors may be authorized to do by a resolution of the Association.

Section 3.3 Managing Agent.

The Board of Directors may employ for the Condominium a "Managing Agent" at a compensation established by the Board of Directors.

Section 3.3.1 Qualifications of Managing Agent.

The Managing Agent shall be a bona fide business enterprise, which manages common interest residential communities. Such firm shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The Managing Agent must be able to advise the Board of Directors regarding the administrative operation of the Condominium and shall employ personnel expert in the areas of condominium insurance, accounting, labor relations and condominium regulation.

Section 3.3.2 Duties of Managing Agent.

The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, including, but not limited to, the duties listed in paragraphs (a), (c), (d), (e), (h), (i), (j), (k), (l), (m), (r) and (s) of Section 3.2 of these Bylaws. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these Bylaws other than the powers set forth in paragraphs (b), (f), (g), (o), (p), and (q) of Section 3.2 of these Bylaws. The Managing Agent shall perform the obligations, duties and services relating to management of the property, the rights of Mortgagees and the maintenance of reserve funds in compliance with the provisions of these Bylaws.

Section 3.3.3 Standards of Performance.

The Board of Directors shall impose appropriate standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Board of Directors:

- the cash method of accounting shall be employed;

- two (2) or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
- reserve accounts of the Association shall not be commingled with any other accounts;
- no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder's fees, service fees or otherwise; any discounts received shall benefit the Association;
- any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
- an annual financial report shall be prepared for the Association disclosing:
 - all income and disbursement activity for the preceding period;
 - the status of all accounts in an "actual" versus "projected" (budget) format; and
 - any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or fifteen percent (15%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts).

Section 3.3.4 Cancellation of Management Contracts.

Subject to the provisions of Section 47-7C-5 of the Condominium Act, during the period when persons designated by the Declarant constitute a majority of the Board of Directors, the Board of Directors may employ a Managing Agent for a term not to exceed three (3) years. Any contract with the Managing Agent must provide that it may be terminated with or without cause on no more than thirty (30) days written notice.

Section 3.4 Election and Term of Office.

At the first annual meeting of the Association, the term of office of one (1) member of the Board of Directors shall be fixed at three (3) years, the term of office of one (1) member of the Board of Directors shall be fixed at two (2) years, and the term of office of one (1) member of the Board of Directors shall be fixed at one (1) year. At the expiration of the initial term of office of each member of the initial Board of Directors, a successor shall be elected to serve for a term of three (3) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Persons qualified to be members of the Board of Directors may be nominated for election only as follows:

Any Unit Owner may submit to the Secretary at least thirty (30) days before the meeting at which the election is to be held a nominating petition signed by Unit Owners owning at least three (3) Units, a statement that the person nominated is willing to serve on the Board of Directors and a biographical sketch of the nominee. The Secretary shall mail or hand deliver the submitted items to every Unit Owner along with the notice of such meetings; or

Nominations may be submitted from the floor at the meeting at which the election is held for each vacancy on the Board of Directors for which no more than one person has been nominated by petition.

Section 3.5 Removal or Resignation of Directors.

Except with respect to Directors designated by Declarant, at any regular or special meeting duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a Majority of the Unit 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 Unit Owners shall be given at least seven (7) days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Board of Directors may resign at any time and shall be deemed to have resigned upon disposition of his Unit.

Section 3.6 Vacancies.

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors for the remainder of the term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association. Notwithstanding anything to the contrary in this Section or in the preceding Section 3.5, so long as the Declarant owns ten percent (10%) or more of the Units which may be created pursuant to the Declaration, (but in no event after the expiration of the maximum time permitted by Section 47-7C-3 of the Condominium Act) the Declarant shall designate the successor to any resigned or removed member previously designated by the Declarant.

Section 3.7 Organizational Meeting.

The first meeting of the Board of Directors following the annual meeting of the Association shall be held within seven (7) days thereafter at such time and place as shall be fixed by the Association at the meeting at which such Board of Directors shall have been elected. No notice shall be necessary to the Directors who individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section 3.8 Regular Meetings.

Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but such meetings shall be held at least once every six (6) months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, by mail or telegraph, at least ten (10) days prior to the day named for such meeting.

Section 3.9 Special Meetings.

Special meetings of the Board of Directors may be called by the President on two (2) business days notice to each Director, given by mail or telephone, which notice shall state the time, place and purpose of the meetings. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors.

Section 3.10 Waiver of Notice.

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

Section 3.11 Quorum of Board of Directors.

At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. Any Director may participate in, and be regarded as present at, any meeting of the Board of Directors by means of conference telephone or any other means of communication by which all persons participating in the meeting can hear each other at the same time.

Section 3.12 Compensation.

No Director shall receive any compensation from the Association for acting as a Director, but may be reimbursed for expenses incurred on behalf of the Association.

Section 3.13 Conduct of Meetings.

The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The then current edition of *Robert's Rules of Order* shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Declaration, these Bylaws or the Condominium Act.

Section 3.14 Action without Meeting.

To the extent allowed by the Condominium Act, any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section 3.15 Liability of the Directors and Officers.

To the extent allowed by law, the officers and members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. To the extent allowed by the New Mexico Non-Profit Corporation Act and the Condominium Act, the Association shall indemnify and hold harmless each of the officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Condominium Act, the Declaration or these Bylaws. Officers and members of the Board of Directors shall have no personal liability with respect to any contract made

by them on behalf of the Association. The liability of any Unit Owner arising out of any contract made by the officers or Board of Directors, or out of the aforesaid indemnity in favor of the members of the Board of Directors or officers, or for damages as a result of injuries arising in connection with the Common Elements solely by virtue of his ownership of a Percentage Interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by his Percentage Interest. Every agreement made by the officers, the Board of Directors or the Managing Agent on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to the total liability thereunder multiplied by his Common Expense Liability.

Section 3.16 Liability of the Association

The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or, except to the extent of insurance, for injury or damage to Person or property caused by the elements or by the Owner of any Condominium Unit, or by any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Unit Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. No diminution or abatement of any assessment, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

Section 3.17 Common or Interested Directors.

Each member of the Board of Directors shall exercise his powers and duties in good faith and with a view of the interests of the Condominium. No contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the Directors of the Association are Directors or officers or are pecuniarily or otherwise interested is either void or voidable because any such Director is present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

- The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- The fact of the common directorate or interest is disclosed or known to at least a majority of the Unit Owners, and the Unit Owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested director may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract

or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if such Director were not such Director or officer of such Association or not so interested.

Article 4 Officers

Section 4.1 Designation.

The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Vice President shall be members of the Board of Directors. Any other officers shall be Unit Owners or appointees of Declarant.

Section 4.2 Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 4.3 Removal of Officers.

Upon the affirmative vote of a majority of all members of the Board of Directors any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

Section 4.4 President.

The President shall be the chief executive officer of the Association; preside at all meetings of the Association and of the Board of Directors; and have all of the general powers and duties which are incident to the office of President of the corporation including, without limitation, the power to appoint committees from among the Unit Owners from time to time as the President may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4.5 Vice President.

The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President.

Section 4.6 Secretary.

The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Unit Owners and Mortgagees hereunder shall be delivered; and, in general, perform all the duties incident to the office of secretary of the Association.

Section 4.7 Treasurer.

The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; and be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all the duties incident to the office of Treasurer of the Association.

Section 4.8 Execution of Documents.

All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Five Thousand Dollars (\$5,000.00) shall be executed by any two persons designated by the Board of Directors. All such instruments for expenditures or obligations of Five Thousand Dollars (\$5,000.00) or less may be executed by any one person designated by the Board of Directors.

Section 4.9 Compensation of Officers.

No officer who is also a Director shall receive any compensation from the Association for acting as an officer. Officers may be reimbursed for expenses incurred on behalf of the Association upon approval by the Board of Directors. All amendments to the Declaration required to be executed by the Association shall be executed by the President and the Secretary.

Article 5 Operation of the Property

Section 5.1 Fiscal Year.

The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

Section 5.2 Preparation and Approval of Budget.

At least eighty (80) days before the beginning of the fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration, these Bylaws or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services.

Such budget may also include such reasonable amounts as the Board of Directors considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. No later than sixty-five (65) days before the beginning of the fiscal year, the Board of Directors shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. Such budget shall

constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Association, if ratified pursuant to Section 47-7C-3 of the Act.

The Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the copy of the budget. Unless a majority of the Unit Owners reject the budget, the budget shall be deemed ratified, whether or not a quorum is present.

In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall continue until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

During any year in which the Declarant exercises its right to add Units to the Condominium, the Declarant shall pay assessments for units under construction beginning on the first day of the month in which a building permit is issued for the building in which a Unit will be located. The amount of the assessment will be the same as for other Units during that assessment year.

Section 5.3 Assessment of Common Expenses.

The total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Board of Directors and ratified by the Unit Owners shall be assessed against each Unit Owner in proportion to his respective Common Expense Liability and shall be a lien against each Unit Owner's Unit as provided in the Act, the Declaration and these Bylaws. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners and, upon written request, to each Eligible Mortgagee an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems advisable, be credited according to each Unit Owner's Common Expense Liability to the next quarterly installments due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners after preparation of a revised budget ratified as provided in Section 5.2. The shortage shall be assessed in accordance with their Common Expense Liability and shall be payable either: (1) in full with payment of the next periodic assessment due; or (2) in not more than two (2) equal quarterly installments, as the Board of Directors may determine.

Section 5.4 Reserves.

The Board of Directors may establish and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Unit Owner's assessment, upon ratification by the Unit Owners of an adjusted budget, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Common Expense Liabilities, and which may be payable in a lump sum or in installments as the Board of Directors may determine. The Board of Directors shall serve notice of any such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next periodic payment which is due more than ten (10) days after the delivery of such notice of further assessment. All Unit Owners shall

be obligated to pay the adjusted amount or, if such further assessment is not payable in installments, such assessment shall be a lien as of the effective date as set forth in Section 7.2.

Section 5.5 Effect of Failure to Prepare or Adopt Budget.

The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each periodic installment at the rate established for the previous fiscal year until notice of the quarterly payment which is due more than fifteen (15) days after such new annual or adjusted budget shall have been delivered to, and ratified by, the Unit Owners.

Section 5.6 Accounts.

All sums collected by the Board of Directors with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund, but shall be held for each Unit Owner in accordance with his Common Expense Liability.

Section 5.7 Payment of Assessments.

Each Unit Owner shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 5.3 of these Bylaws. Assessments shall be due and payable in equal installments on the first day of January, April, July and October of each year. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit after the date of recordation of a conveyance by him in fee of such Unit, provided notice is given to the Association prior to conveyance. Before or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefor. Each Eligible Mortgagee who comes into possession of a Condominium Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium Unit free of any claims for unpaid assessments or charges against such Unit which accrue before the time such Eligible Mortgagee comes into possession thereof, except for claims for a *pro rata* share of such assessments or charges resulting from a *pro rata* reallocation of such assessments or charges to all Condominium Units including the mortgaged Condominium Unit.

Section 5.8 Collection of Assessments.

The Board of Directors or the Managing Agent, at the request of the Board of Directors, may take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remain unpaid for more than ten (10) days from the due date for payment thereof. Any assessment, or installment thereof, not paid within thirty (30) days after due shall accrue a late charge in the amount of ten percent (10%) of the overdue assessment or installment for each month the assessment or installment is unpaid.

Section 5.9 Statement of Assessments.

The Board of Directors shall promptly provide any Unit Owner, contract purchaser or Eligible Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common

Expenses due from such Unit Owner as provided in Section 47-7C-16 of the Act. Such statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association's Board of Directors and every Unit Owner. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation to the extent permitted by the Condominium Act.

Section 5.10 Utility Charges.

Any cost of utilities serving the Condominium exclusive of the Units shall be a Common Expense.

Section 5.11 Use of Common Elements.

No Unit Owner shall place or cause or permit to be placed on or in the Common Elements any furniture, packages or objects of any kind.

Section 5.12 Disclaimer of Bailee Liability.

The Board of Directors, the Association, any Unit Owner and the Declarant shall not be considered a bailee of any personal property stored on the Common Elements (including property located in vehicles parked on the Condominium), whether or not exclusive possession of the particular area is given to a Unit Owner for storage purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence.

Article 6 Insurance

Section 6.1 Authority to Purchase.

Except as otherwise provided in Section 6.5 of these Bylaws, all insurance policies relating to the Property shall be purchased by the Board of Directors. Neither the Board of Directors nor the Managing Agent nor the Declarant shall be liable for failure to obtain any coverages required by this Article VI or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

Each such policy shall provide that:

- The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;
- Such policy shall not be canceled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and neither shall have so cured or undertaken action to cure such defect within sixty (60) days after such demand.

- Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Eligible Mortgagees.

The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.

All policies of insurance shall be written by reputable companies licensed to do business in the State of New Mexico. Physical damage policies shall be in form and substance acceptable to the Eligible Mortgagees.

Section 6.2 Physical Damage Insurance.

The Board of Directors shall obtain and maintain a blanket "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring the entire Property (including all of the Units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners), together with all service machinery contained therein, and covering the interests of the Association, the Board of Directors and all Unit Owners and their Eligible Mortgagees, as their interests may appear, (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors contained in Article XIII of the Declaration), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, the amount of such insurance shall be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage.

Such policy shall also provide:

- A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so;
- The "agreed amount" or elimination of the co-insurance clause; and
- That any "other insurance" clause expressly exclude individual Unit Owner's policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owner's policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Eligible Mortgagees unless otherwise required by law.

A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder together with proof of payment of premiums shall be delivered by the insurer to any Eligible Mortgagee so requesting at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage).

without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to Section 6.2 of these Bylaws. All Eligible Mortgagees shall be notified promptly of any event giving rise to a claim under such policy.

Section 6.3 Liability Insurance.

The Board of Directors shall obtain and maintain comprehensive general liability for death and bodily injury (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors), medical payments and property damage insurance in such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owners (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and shall contain:

- a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured;
- hired and non-owned vehicle coverage;
- host liquor liability coverage with respect to events sponsored by the Association;
- deletion of the normal products exclusion with respect to events sponsored by the Association; and
- a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than Two Million Dollars (\$2,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained.

Section 6.4 Other Insurance.

The Board of Directors may obtain and maintain:

- adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent. Such fidelity bonds shall name the Association as an obligee; be written in an amount not less than one and one half (1½) times the estimated annual operation expenses of the Condominium, including reserves; and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- if required by any governmental or quasi-governmental agency including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

- workmen's compensation insurance if and to the extent necessary to meet the requirements of law;
- such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority of the Unit Owners.

Section 6.5 Separate Insurance.

Each Unit Owner shall have the right, at his own expense, to obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit normally called "tenants improvements and betterments coverage". No Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies except as provided in Section 6.5 of these Bylaws.

Article 7 Compliance and Default

Section 7.1 Relief.

Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Condominium Instruments and the Condominium Act as any of the same may be amended from time to time. In addition to the remedies provided in Section 47-7C-16 of the Condominium Act, a default by a Unit Owner shall entitle the Association, acting through its Board of Directors or through the Managing Agent, to the following relief:

Section 7.1.1 Additional Liability.

Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any Member, of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances.

Section 7.1.2 Costs and Attorneys' Fees.

In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be determined by the court.

Section 7.1.3 No Waiver of Rights.

The failure of the Association, the Board of Directors or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Condominium Act shall not constitute a waiver of the right of the Association, the Board of Directors or the Unit Owner to

enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or the Condominium Act or at law or in equity.

Section 7.1.4 Interest.

In the event of a default by any Unit Owner in paying any sum assessed against his Unit other than for Common Expenses which continues for a period in excess of thirty (30) days, the principal amount unpaid shall bear interest at the rate of ten percent (10%) per month from the due date until paid.

Section 7.1.5 Abating and Enjoining Violations by Unit Owners.

The violation of any of the Regulations adopted by the Board of Directors, the breach of any Bylaw contained herein or the breach of any provision of the Declaration or the Condominium Act shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws:

- to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or
- to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

Section 7.1.6 Legal Proceedings.

Failure to comply with any of the terms of the Declaration, these Bylaws and the Rules and Regulations shall be grounds for relief, including, without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure or the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the Managing Agent or, if appropriate, by any aggrieved Unit Owner and shall not constitute an election of remedies.

Section 7.2 Lien for Assessments.

The total annual assessment of each Unit Owner for Common Expenses or any special assessment made pursuant to these Bylaws is hereby declared to be a lien levied against the Condominium Unit of such Unit Owner as provided in Section 47-7C-16 of the Condominium Act, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Condominium and, as to special assessments, on the first day of the next month which begins more than fifteen (15) days after delivery to the Unit Owner of notice of such special assessment. The Board of Directors or the Managing Agent may file or record such other or further notice of any such lien, or such other or further document, to confirm the establishment and priority of such lien.

If an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Unit Owner and his Eligible Mortgagee by the Board of Directors or the Managing Agent.

The lien for assessment may be enforced and foreclosed in the manner provided by the laws of the State of New Mexico by action in the name of the Board of Directors, or the Managing Agent, acting on behalf of the Association. During the pendency of such suit the Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the State of New Mexico.

A suit to recover a money judgment for unpaid contributions may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 7.3 Supplemental Enforcement of the Lien.

In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declaration, these Bylaws or the Condominium Act, all of the Unit Owners may be required by the Declarant or the Board of Directors to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby.

Section 7.4 Subordination and Mortgagee Protection.

Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a mortgage made in good faith for value received; provided, however, that such Mortgage secures a loan made by an Eligible Mortgagee; and provided, further, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Unit at such sale from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

Article 8 Amendments to Bylaws

These Bylaws may not be modified or amended except by a vote of fifty-one percent (51%) of the votes in the Condominium, pursuant to the Act, the Declaration and these Bylaws. Until the expiration of the maximum time permitted by Section 47-7C-3 of the Condominium Act, Section 3.1 of these Bylaws may not be amended without the consent in writing of the Declarant, so long as the Declarant shall be a Unit Owner of Units representing ten percent (10%) or more of the Units which may be created in the Condominium.

Article 9 Miscellaneous

Section 9.1 Notices.

All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, postage prepaid (or otherwise as the Condominium Act may permit) if:

- to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or
- to the Association, the Board of Directors or to the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designated an address in writing to the Secretary shall be entitled to receive all notices hereunder.

Section 9.2 Captions.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 9.3 Gender.

The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

In witness whereof, these Bylaws have been executed and attested by the President and the Secretary on behalf of the Association, this 3rd day of April, 1992.

Gold Dust Condominium Association

By Leona L. Bayley
Secretary

Attest:

By Pross S. Bayley
President