

**Exhibit "A"**

**Condominium Declaration**

**for**

**Benchmark Condominium**

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Filed For Record 4-11-83 at 3:00 P.M. Stella M. Lopez, Recorder  
Book 109 Page 267  
CONDOMINIUM DECLARATION

FOR

BENCHMARK CONDOMINIUM

Article ISubmission; Defined Terms

Section 1.1 Submission of Property. Western World Development, Inc., a Mississippi corporation authorized to do business in New Mexico, owner of the real property described in Exhibit "A" annexed hereto, located within 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 Benchmark Condominium, ("Condominium").

Section 1.2 Defined Terms.

(a) The term "Association" shall mean the Benchmark Condominium Association, Inc., a New Mexico non-profit corporation.

(b) The term "Bylaws" shall mean and refer to the Bylaws of the Association filed with the New Mexico State Corporation Commission.

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(c) The term "Board of Directors" shall mean the Board of Directors of the Association.

(d) 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 II

### Building on the Property; Unit Boundaries

Section 2.1 The Building. The location, dimensions and area of each building on the Property are depicted on Exhibit "B," ("Plat").

Section 2.2 Units. The location of Units and any Limited Common Elements allocated exclusively to each Unit are shown on the "Plan" attached as Exhibit "C" hereto. Attached as Exhibit "D" 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 shall be the ratio of the size of the Unit to the size of all Units

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in the Condominium, expressed as a decimal fraction. Each Unit shall be allotted fifty-one (51) votes in the Association. The number of Units created hereby is fifteen (15).

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. The provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the Unit Owner and the Association regardless of the Unit boundaries and the ownership of the Units and the Common Elements.

Section 2.5 Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units and subdivision of Units will be permitted subject to compliance with the provisions therefor in Article V, Section 5.7 of the Bylaws and in Sections 47-7B-12 and 47-7B-13 of the Condominium Act.

### Article III

#### 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

all of the Unit Owners and establish a reasonable charge to such Unit Owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

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Section 3.2 Use of Unit and the Common Elements. Units shall be used only for housing and the related common purposes for which the Property was designed.

Article IV

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 and Article V, Section 9 of the Bylaws. In case of emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

Article V

Amendment of Declaration

Section 5.1. 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

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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-five percent (75%) 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 VI

##### Right to Lease Units

Declarant shall retain title to each Unit not sold to any purchaser. Declarant retains the right to enter into leases

with third parties for the occupancy of any of the Units owned by Declarant and not sold to any purchaser.

#### Article VII

##### Priority of Mortgages

Subordination and Mortgage Protection. Notwithstanding

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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 VIII

##### Special Declarant Rights

Section 8.1 Additional Land. Declarant reserves the right, until the twenty-fifth (25th) anniversary of the recordation hereof, to add additional land to the Condominium as shown on Exhibit "E" and to create upon such added land up to ~~twenty-three (23) additional Units, Common Elements and Limited~~ Common Elements in accordance with Section 47-78-10 of the ~~Condominium Act~~ without the consent of any Unit Owner or Mort- gagee. All or any part of the additional land may be added at

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any time, and reserved development rights may be exercised as to any added parcel in any order and at any time.

Section 8.2 Option to Create Units and Common Elements.

Declarant reserves the right, until the twenty-fifth (25th) anniversary of the recordation of this Declaration to add up to eight (8) additional Units with or without appurtenant Limited Common Elements on the land within the Condominium as shown on Exhibit "E."

Section 8.3 Adjustment of Allocated Interests. If

Declarant exercises the right to add additional Units to the Condominium, or subdivide or convert any Unit previously created into additional Units and/or Common Elements, the Percentage Interest of each Unit in the Common Elements and Common Expenses shall be computed and reallocated on the basis of size, as specified in Article II, Section 2.2 hereof and each Unit shall be allotted fifty-one (51) votes in the Association.

Section 8.4 No Limitation as to Development Rights. Any

Development Right herein reserved by the Declarant under Article VIII may be exercised with respect to different parcels or portions of the Property at different times. If any Development Right is exercised in any portion of the Real Estate sub-

ject to that Development Right, that Development Right need not be exercised in all or in any other portion of the remainder of that Real Estate.



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Section 8.5 Declarant Control of the Association.

Pursuant to Section 47-7C-3, Declarant reserves the right to appoint the 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 8.6 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.

Section 8.7 Creation of Units, Common Elements and Limited Common Elements. Declarant reserves the right, until the twenty-fifth (25th) anniversary of the recording hereof, to create within the Condominium additional Common Elements and Limited Common Elements as described in Exhibit "B." These may be built at any time and in any order.

Article IX

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Association May Assign Income

The Unit Owners' Association shall have all the powers provided for in Section 47-7C-2 of the Condominium Act including but not limited to the right to assign its right to future income (including the right to receive Common Expense Assessments) for the purpose of securing repayment of funds borrowed or indebtedness incurred by the Association in the performance of its responsibilities.

Article XTimeshares

Section 10.1 Timeshares--Declarant. The Declarant, at any time, may elect to record a Supplemental Declaration of Timeshare Covenants, Conditions and Restrictions ("Supplemental Declaration") which creates Timeshare Interests in the form of undivided interests as tenants-in-common in any Unit owned by Declarant and granting to the Grantee the exclusive right to occupy the Unit during one or more Timeshare Use Periods.

Section 10.2 Timeshares--Unit Owners. Other than any Supplemental Declaration recorded by or for which written consent has been given by the Declarant, no Unit Owner may create

Timeshare Interests earlier than

(a) ninety (90) days after conveyance by Declarant  
or ninety percent (90%) of all Timeshare Interests which may be created by the Declarant under any Supplemental Declaration, or

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(b) one (1) year after the Declarant has ceased to offer Timeshare Interests or Units for sale in the ordinary course of business. Any such Supplemental Declaration shall be either:

(i) identical in form to any Supplemental Declaration creating Timeshare Interests recorded by the Declarant and any amendments thereto, or

(ii) substantially similar in form to any Supplemental Declaration creating Timeshare Interests recorded by the Declarant and any amendments thereto and approved and signed by the Board of Directors of the Association prior to recording.

Section 10.3 Timeshares--Voting. Notwithstanding the provisions of Section 47-7C-10A of the Condominium Act and pursuant to said Section, each Owner of a Timeshare Interest shall be allowed to cast the vote or votes allocated to his Timeshare Interest by the Supplemental Declaration creating such Timeshare Interest.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 4<sup>th</sup> day of April, 1983.

WESTERN WORLD DEVELOPMENT, INC.  
A Mississippi Corporation

By [Signature]  
its President

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STATE OF NEW MEXICO )  
                              : ss.  
COUNTY OF                 )

The foregoing document was acknowledged before me by  
Fred Bourn, President of Western  
World Development, Inc., a Mississippi corporation, for and on  
behalf of said corporation, this 4th day of April,  
1983.



NOTARY PUBLIC

My Commission Expires:

28 Feb 84

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EXHIBIT "A"

Lot 1, Block G, Angel Fire Village Unit I,  
Colfax County, New Mexico.



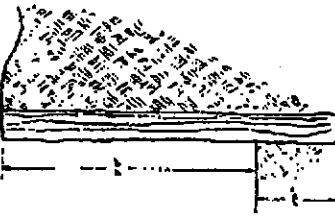
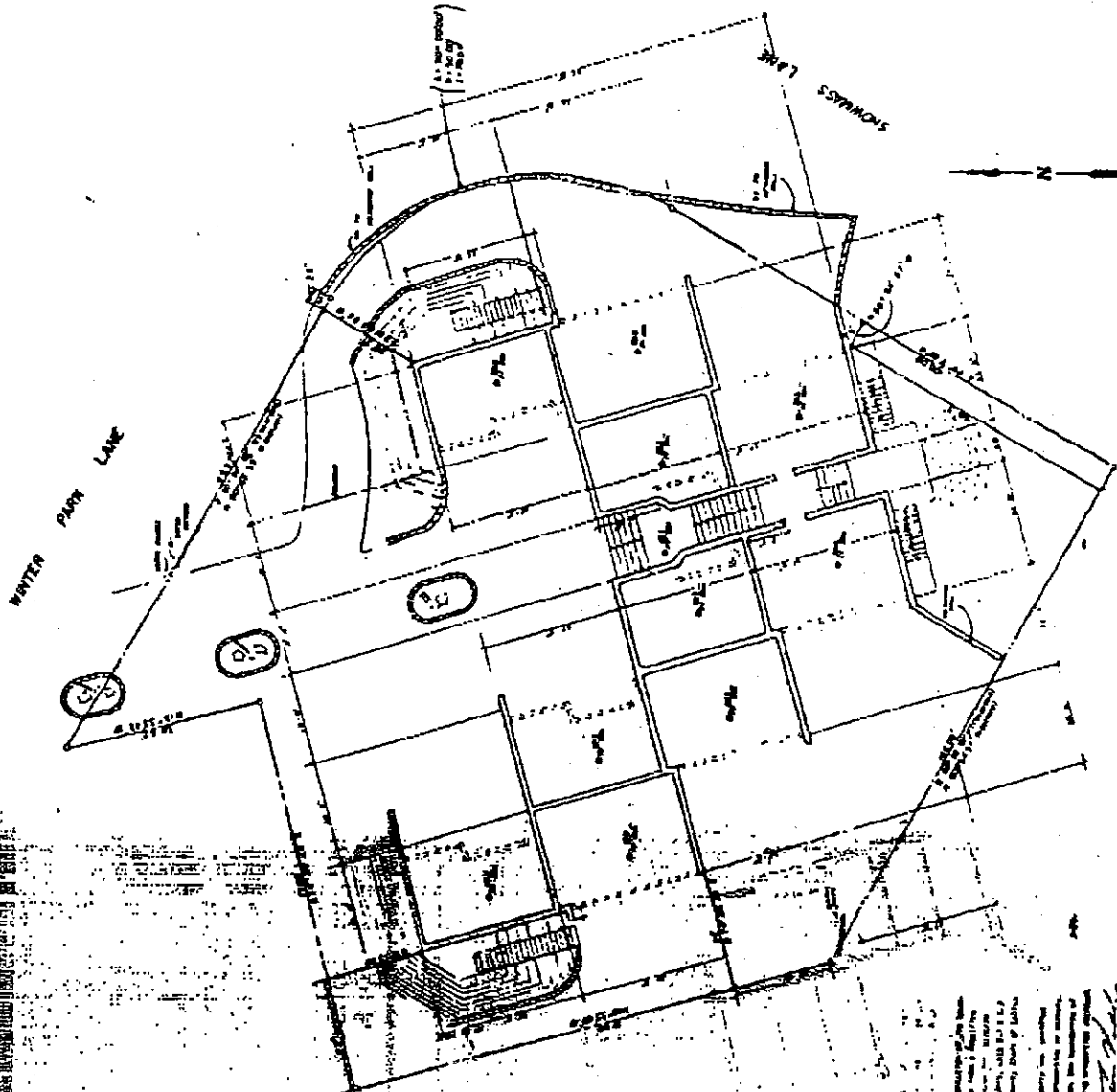
282

EXHIBIT D

<u>UNIT NO.</u>	<u>AREA IN SQ. FT.</u>	<u>PERCENTAGE INTEREST</u>
111	974	.0699
112	974	.0699
113	974	.0699
114	974	.0699
115	974	.0699
211	974	.0699
212	974	.0699
213	974	.0699
214	974	.0699
215	974	.0699
311	840	.0602
312	840	.0602
313	840	.0602
314	840	.0602
315	840	.0602
	<u>13,940</u>	<u>1.0000</u>

Origin recorded in the records of Colfax County, New Mexico, in Book \_\_\_\_\_, pages \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 1983.

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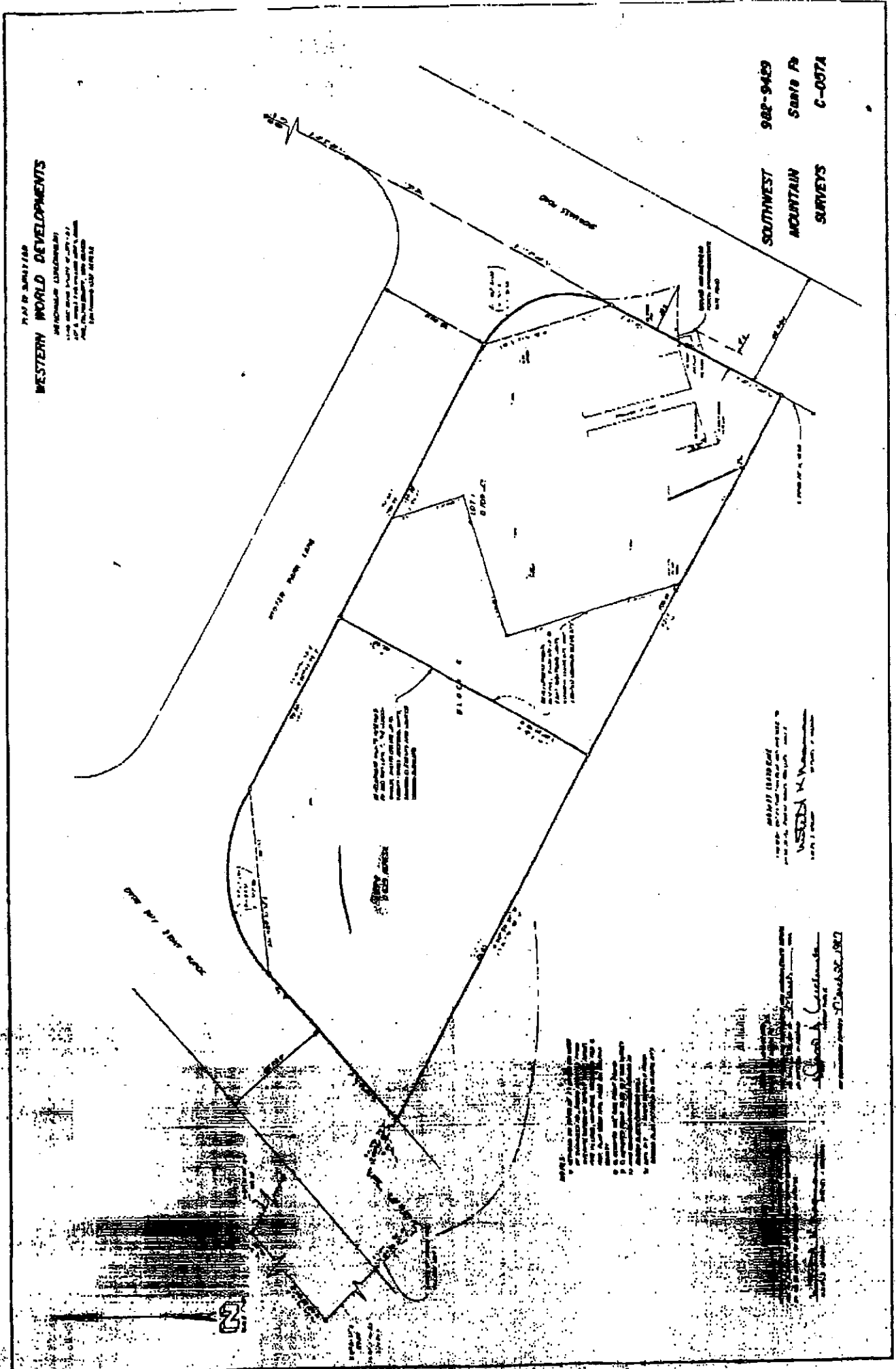
AS BUILT FOUNDATION AND IMPROVEMENTS MECHANICAL CONDUITS 10/1/83 10/1/83	
VALLEY ENGINEERING CO. 1001 N. 10TH ST. ALBUQUERQUE, N.M. 87102	

Exhibit "B"

I, the undersigned, being a duly qualified and licensed Professional Engineer in the State of New Mexico, do hereby certify that the above is a true and correct copy of the original as filed in my office, and that the same has been compared with the original and found to be a true and correct copy.

\_\_\_\_\_  
 Date: 10/1/83

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**Exhibit "B"**

**Bylaws**

**of**

**Benchmark Condominium Association**

BYLAWS  
OF  
BENCHMARK CONDOMINIUM ASSOCIATION

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BYLAWS  
OF  
BENCHMARK CONDOMINIUM

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OF NEW MEXICO

APR 10 1985

BYLAWS  
OF  
BENCHMARK CONDOMINIUM ASSOCIATION CORPORATION AND  
FRANCHISE TAX DEPTS.

ARTICLE I

Plan of Unit Ownership

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, New Mexico, and more particularly described in the Declaration, has been submitted to the provisions of the Condominium Act by recordation simultaneously herewith of the Declaration among the land records of Colfax County in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

Section 1.2. Definitions.

(a) The term "Declaration" shall mean the Condominium Declaration for Benchmark Condominium, including any amendments thereto filed for record with the County Clerk of Colfax County, New Mexico.

(b) The term "Association" shall mean the Benchmark Condominium Association.

(c) The term "Consent of a Majority of Owners" shall mean a vote of agreement of Owners of Units and Timeshare Interests to which more than fifty percent (50%) of the aggregate votes in the Association are allocated under the Declaration and Supplemental Declaration cast in person or by proxy at a meeting called for the purpose of consenting to any action permitted under these Bylaws.

(d) The term "Owner" or "Owners" shall mean both an Owner of a Unit and Owner of a Timeshare Interest or Interests in a Unit.

(e) The term "Supplemental Declaration" shall mean the Supplemental Declaration of Timeshare Covenants, Conditions and Restrictions for Benchmark Condominium, including any amendments thereto, filed for record with the County Clerk of Colfax County, New Mexico.

(f) The term "Unit Owner" shall mean Owners of Units in the Condominium.

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(g) The term "Timeshare Interest Owner" shall mean Owners of Timeshare Interests in a Unit in the Condominium.

(h) The term "Declarant" shall mean the Declarant as referred to in the Declaration.

(i) Terms not otherwise defined herein or in the Declaration or Supplemental Declaration and any amendments thereto, shall have the meanings defined in Section 47-7A-3 of the Condominium Act.

Section 1.3. Compliance. Every Unit Owner, Owner of a Timeshare Interest, Tenant and all those entitled to occupy a Unit or use in any manner the Property shall comply with these Bylaws.

Section 1.4. 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.

## ARTICLE II

### Association

Section 2.1. Composition. The Association shall consist of a New Mexico non-profit 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, the Declaration and the Supplemental Declaration. Except as to amendments to the Declaration or Supplemental Declaration, the termination of the Condominium or election of the Board of Directors or determinations as to the qualifications, powers, duties and terms of office of the Board, other than filling vacancies in its membership for the unexpired portion of any term, and other 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 or Timeshare Interest in a Unit is required in order to qualify for membership in the Association. Any person on becoming an owner of a Unit or Timeshare Interest in a Unit shall automatically become a member of this Association and be subject to these Bylaws. Such mem-

bership shall terminate without any formal Association action whenever such person ceases to own a Unit or Timeshare Interest in a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in the Association, or impair any rights or remedies which the Unit Owners or Timeshare Interest Owners have, either through the Board of Directors of the Association or directly, against such former Owner and member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto.

Section 2.3. Annual Meetings. The annual meetings of the Association shall be held at least thirty-five (35) days before the beginning of each fiscal year. At such annual meetings (1) the Board of Directors shall be elected by ballot of the Unit Owners and Timeshare Interest Owners in accordance with the requirements of Section 3.4 of Article III of these Bylaws and (2) all budget changes shall be considered in accordance with Article V of these Bylaws. So long as the Declarant shall own Units representing more than fifty percent (50%) of the Units which may be created (but in no event after the expiration of the maximum time permitted by Section 47-7C-3 of the Condominium Act), the Declarant shall be entitled to designate the maximum members of the Board of Directors who shall serve for the longest term.

Section 2.4. 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 Owners as may be designated by the Board of Directors.

Section 2.5. Special Meetings.

(a) 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 Owners of not less than twenty percent (20%) of the aggregate votes. 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.

(b, On the earlier of (1) a day within one hundred eighty (180) days after conveyance of Units representing ninety percent (90%) or more of the Units which may be created or (2) the expiration of the maximum time permitted by Section 47-7C-3 of the Condominium Act, or (3) voluntary relinquishment of the Declarant's right to appoint and remove officers and members of the Board of Directors whereby upon thirty (30) days after writ-

ten notice by Declarant, a special meeting of the Association shall be held at which all of the members of the Board of Directors designated by the Declarant shall resign, and the Owners, including the Declarant if the Declarant owns one or more Units or Timeshare Interests, 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. Unless otherwise waived, the Secretary shall mail or deliver to each Owner a notice of each meeting of the Association at least fourteen (14) but not more than sixty (60) days (or not more than thirty (30) days if the meeting is for ratification of the budget under Article V, Section 5.1(b)(3)) 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 11.1 of Article XI of the 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, Owners of a majority of the votes 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. Order of Business. The order of business of all meetings of the Association shall be as follows:

- (a) Roll call;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Report of Board of Directors;
- (f) Reports of committees;
- (g) Election or appointment of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business;
- (j) New business.

Section 2.9. Title to Units. Title to a Unit may be taken in the name of one or more persons, in any manner permitted by law. The Association may acquire, hold and transfer full legal title to one or more Units in the Condominium in its own name.

Section 2.10. Voting.

(a) Voting at all meetings of the Association shall be on the basis of the following: each Unit is entitled to fifty-two (52) votes and each Timeshare Interest is entitled to one (1) vote.

(b) Where the ownership of a Unit or a Timeshare Interest is in more than one person, the person who shall be entitled to cast the vote of such Unit or Timeshare Interest shall be the person named in a certificate executed by all of the owners of such Unit or Timeshare Interest and filed with the Secretary. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. In the absence of such named person from the meeting, and if only one of the multiple owners of a Unit or Timeshare Interest is present, he is entitled to cast the vote allocated to that Unit or Timeshare Interest. If more than one of the multiple owners are present, the vote allocated to that Unit or Timeshare Interest be cast only in accordance with the agreement of a majority in interest of the multiple owners pursuant to Section 47-7C-10 of the Condominium Act. There is a majority agreement if any one of the multiple owners casts the vote allocated to that Unit or Timeshare Interest without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit or Timeshare Interest.

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

(d) If the Declarant owns or holds title to one or more Units or Timeshare Interests, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit or Units or Timeshare Interests are entitled.

(e) No Owners may vote at any meeting of the Association or be elected to or serve on the Board of Directors if the Association has perfected a lien against his Unit or

Timeshare Interest and the amount necessary to release such lien has not been paid at the time of such meeting or election.

(g) No votes allocated to a Unit or Timeshare Interest owned by the Association may be cast.

Section 2.11. Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Owner in favor of only another Owner, a Mortgagee or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting or meetings 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 or Timeshare Interest. No proxy shall in any event be valid for a period in excess of one hundred and eighty (180) days after the execution thereof.

Section 2.12. Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Owners entitled to cast twenty percent (20%) or more of the aggregate votes in the Condominium shall constitute a quorum at all meetings of the Association.

Section 2.13. 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, Supplemental Declaration, these Bylaws or the Condominium Act. All votes shall be tallied by tellers appointed by the President.

### ARTICLE III

#### Board of Directors

Section 3.1. (a) Number and Qualifications. The affairs of the Association shall be governed by a Board of Directors. 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 Owners by the Declarant, and thereafter until their successors shall have been elected by the Owners, the Board of Directors shall consist of such persons as may be designated by the Declarant, provided, however, that the foregoing power of designation shall not extend beyond the maxi-

maximum time permitted by Section 47-7C-3 of the Condominium Act. The Board of Directors shall be composed of three (3) persons, all of whom shall be Owners or spouses of Owners, Mortgagees (or designees of Mortgagees) or designees of the Declarant (if the Declarant exercises the reserved development right to add additional land, units, common elements and limited elements, the number of directors shall be five (5) upon recording of the amendment to the Declaration). Provided, however, that, anything in these Bylaws to the contrary notwithstanding, so long as the Declarant owns Units representing 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) a majority of the members of the Board of Directors shall be designated by the 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. The time limit on the period of Declarant's control shall commence upon closing of the first Unit to be sold in any portion of the Condominium.

Section 3.2. Powers and Duties. The Board of Directors shall have all 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, Supplemental Declaration or by these Bylaws required to be exercised and done by the 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; provided, however, that such Rules and Regulations shall not be in conflict with the Condominium Act, the Declaration, Supplemental Declaration or these Bylaws. The Board of Directors may 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 this Article), 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 Owner for the Common Expense pursuant to Article V, herein.

(b) Make assessments against Owners to defray the costs and expenses of the Condominium, establish the means and methods of collecting such assessments from the 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 Owner for his proportionate share of the Common Expenses shall be payable not less often than annually and at such time or times as designated by the Board of Directors, provided, however, that the Owner of a Timeshare Interest shall have paid the annual common expense allocated to his Interest prior to exercising his right of use as provided in the Supplemental Declaration.

(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, supplies and material 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 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. (Section 5.8 pg 26)

(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, Supplemental 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, Supplemental Declaration, these Bylaws and the Rules and Regulations and act on behalf of the 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 Owners of individual Units or



otherwise provided for in Article V, 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 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 Owners. All books and records shall be kept in accordance with good and accepted accounting practices, and the same shall be audited at least once every year by an independent accountant retained by the Board of Directors who shall not be a resident of the Condominium or an Owner. The cost of such audit shall be a Common Expense.

(m) Notify a Mortgagee of any default hereunder by the Owner subject to such Mortgage, in the event such default continues for a period exceeding sixty (60) days.

(n) Borrow money on behalf of the Condominium (including money secured by an assignment of future income) when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements, provided, however, that the Consent of a Majority of 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 Two Thousand Five Hundred Dollars (\$2,500). If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this paragraph (n) is not repaid by the Association, an 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 Owners' Unit or Timeshare Interest.

(o) Acquire, hold and dispose of 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 Owner substantially in the form set forth on Exhibit "A" to these Bylaws and designated "Resale Certificate".

(r) Do such other things and acts not inconsistent with the Condominium Act, the Declaration, Supplemental 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.

(a) Requirements. The Managing Agent shall be a bona fide business enterprise unaffiliated with the Declarant, which manages common interest residential communities. Such firm shall have a minimum of three (3) years experience in real estate, community management and 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 experts in the areas of condominium insurance, accounting, labor relations and condominium regulation.

(b) Duties. 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), (q), and (r) of Section 3.2 of this Article III. 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), (n), (o), and (p) of Section 3.2 of this Article III. 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.

(c) Standards. 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:

- (1) the cash method of accounting shall be employed;
- (2) two (2) or more persons shall be responsible

for handling cash to maintain adequate financial control procedures;

(3) cash accounts of the Association shall not be commingled with any other accounts;

(4) 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, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

(5) 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

(6) an annual financial report shall be prepared for the Association disclosing:

(i) all income and disbursement activity for the preceding year;

(ii) the status of all accounts in an "actual" versus "projected" (budget) format; and

(iii) 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).

(d) Limitations. 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. Should a managing agent be employed, the Association and the Board of Directors shall not undertake "self management" or fail to employ a Managing Agent without the consent of a Majority of the Owners and the consent of two-thirds (2/3) of the Mortgagees, nor shall the Association employ new Managing Agent without thirty (30) days' prior written notice to, and approval by, two-thirds (2/3) of the Mortgagees. Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice and the term of any such contract may not exceed three (3) years.

Section 3.4. Election and Term of Office. (a) At the first

annual meeting of the Association, the term of office of two (2) members of the Board of Directors shall be fixed at three (3) years, the term of office of two (2) members shall be fixed at two (2) years, and the term of office of any remaining members 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.

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

(1) Any 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 or one hundred and fifty (150) Timeshare Interest Owners, 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 Owner along with the notice of such meetings; or

(2) 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 as provided in subparagraph (1) above.

Section 3.5. Removal or Resignation of Members of the Board of Directors. Except with respect to directors appointed 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 two-thirds vote of all persons present and entitled to vote at any meeting of Owners at which a quorum is present and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Owners shall be given 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 aggregate Votes of the Units which may be created (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. Organization Meeting. The first meeting of the Board of Directors following the annual meeting of the Association shall be held within ten (10) 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, and no notice shall be necessary to the newly elected members of the Board of Directors in order to legally constitute such meeting, providing a majority of the whole Board of Directors shall be present thereat.

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 annually 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) business 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 ten (10) business days' notice to each director, given by mail or telegraph, which notice shall state the time, place and purpose of the meeting. 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 one (1) director.

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.

Section 3.12. Fidelity Bonds. As required by Article VI, Section 6.4(a) hereof, there shall be obtained fidelity bonds in an amount not less than one and one-half times the amount of the annual budget (in such form and such greater amounts as may be required by the Mortgagees) for all officers, directors and employees of the Unit Owners' Association, including without limitation the Managing Agent handling or responsible for Condominium funds. The premiums on such bonds shall constitute a Common Expense.✓

Section 3.13. Compensation. No director shall receive any compensation from the Condominium for acting as such a director but may be reimbursed for expenses incurred on behalf of the Association.

Section 3.14. 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, the Supplemental Declaration, these Bylaws or the Condominium Act.

Section 3.15. 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 3.16. Liability of the Board of Directors, Officers, Owners and Association.

(a) To the extent authorized by Section 53-8-26 NMSA 1978 of the Nonprofit Corporation Act, 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. 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, the Supplemental 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 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 the 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 Owners), and that each Owner's liability thereunder shall be limited to the total liability thereunder multiplied by his Common Expense Liability.

(b) 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 for injury or damage to person or property caused by the elements or by any Owner, or 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 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 assessments, 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 to 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 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:

(a) 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

(b) The fact of the common directorate or interest is disclosed or known to at least a majority of the Owners, and the Owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested directors 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.

Section 3.18. Covenants Committee. The Board of Directors may establish a Covenants Committee, consisting of five (5) members appointed by the Board of Directors, each to serve for a term of two (2) years, in order to assure that the Condominium shall always be maintained in a manner:

(a) providing for visual harmony and soundness of repair;

(b) avoiding activities deleterious to the esthetic or property values of the Condominium;

(c) furthering the comfort of the Owners, their guests and tenants; and

(d) promoting the general welfare of the Condominium community.



(1) Powers. The Covenants Committee shall regulate the external design, appearance, use and maintenance of the Common Elements. The Covenants Committee shall have the power to issue a cease and desist request to an Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Condominium Act, the Declaration, Supplemental Declaration, Bylaws, Rules and Regulations or resolutions of the Board of Directors (upon petition of any Owner upon its own motion). The Covenants Committee shall from time to time, as required, provide interpretations of the Declaration, Supplemental Declaration, Bylaws, Rules and Regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by any Owner or the Board of Directors. Any action, ruling or decision of the covenants Committee may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party and a vote of a quorum of the Board of Directors may modify or reverse any such action, ruling or decision.

(2) Authority. The Covenants Committee shall have such additional duties, power and authority as the Board of Directors may from time to time provide by resolution. The Board of Directors may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case by case basis by vote of a quorum thereof. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board of Directors.

#### ARTICLE IV

##### Officers

Section 4.1. Designation. The principal officers of the Association shall be the President, one or more Vice-Presidents, and the Secretary and 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 one of the Vice Presidents shall be members of the Board of Directors. Any other officers may, but need not be members of the Board of Directors or members of the Association.

Section 4.2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization 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 Association, including without limitation the power to appoint committees from among the 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. A 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 any 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-Presidents shall also perform such other duties as shall from time to time be imposed upon them 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 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 amendments to the Declaration and to these Bylaws, required to be signed by the Association, and all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Five Thousand Dollars (\$5,000) 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) 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 such officer.

#### ARTICLE V

##### Operation of the Property

Section 5.1. Determination of Common Expenses and Assessments Against Owners.

(a) Fiscal Year. The fiscal year of the Unit Owners' Association shall be the calendar year unless otherwise determined by the Board of Directors.

(b) Preparation and Approval of Budget.

(1) At least eighty 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 (including Common Furnishings, if any) 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, and services, supplies and other expenses that may be declared to be Common Elements by the Condominium Act, the Declaration, the Supplemental 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 Owners of all related services.

(2) Such budget shall 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. At least 60 days before the beginning of the fiscal year and not less than fourteen (14) nor more than thirty (30) days before the annual meeting scheduled under Article II, Section 2.3 and subparagraph (3) below, the Board of Directors shall send to each 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 Owner. Such budget shall constitute the basis for determining each Owner's assessment for the Common Expenses of the Association, if

ratified pursuant to Section 47-7C-3 of the Condominium Act.

(3) The Board of Directors shall set a date for a meeting of the 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. The budget may be ratified upon a majority vote of the Owners at the meeting whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall continue until such time as the Owners ratify a subsequent budget proposed by the Board of Directors. \*

(4) Within sixty (60) days after the creation of any additional Units, Common Elements or the addition of any additional land by Declarant by the recordation of an amendment to the Declaration submitting such Units, Common Elements or Land to the Condominium, the Board of Directors shall send to each Owner a copy of the budget revised to reflect the proportionate liability of such Units for Common Expenses for the remainder of the fiscal year in which such Units, Common Elements or Land were added to the Condominium. The Board shall follow the procedure for ratification of the budget set forth in subparagraphs (b)(2) and (b)(3) above. The amount of assessments attributable to each Unit shall thereafter be the amount specified in the adjusted budget, until a new budget shall have been adopted by the Board of Directors and ratified by the Owners.

(c) Assessment and Payment of Common Expenses. Subject to the provisions of Section 9.1(a) of Article IX hereof, 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 Owners shall be assessed against each Owner in proportion to his respective Common Expense Liability as defined in the Declaration and Supplemental Declaration and shall be a lien against each Owner's interest as provided in Article IX, Section 9.2 of these Bylaws. On or before the first day of each fiscal year or on such other date as determined by the Board of Directors each Owner shall be obligated to pay his annual assessment, provided, however, that the Owner of a Timeshare Interest shall have paid the annual common expense allotted to his Interest prior to exercising his right of use as provided in the Supplement Declaration. Within sixty (60) days after the end of each fiscal year, the Board of Directors shall supply to all Owners 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 each 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 Owner's Common Expense Liability to the next annual assessment due from Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Owners after preparation of a revised budget ratified as provided above in subsection 5.1(b)(2) and 5.1(b)(3). 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 annual assessment due; or (2) in not more than six (6) equal monthly installments, as the Board of Directors may determine.

(d) Reserves. The Board of Directors shall build up 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 Owner's assessment, upon ratification by the Owners of an adjusted budget, the Board of Directors may at any time levy a further assessment, which shall be assessed against the 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 Owners by a statement in writing giving the amount and reasons therefor, and time of payment. All Owners shall be obligated to pay the adjusted assessment amount and, if such further assessment is not payable in installments, such assessment shall be a lien as of the effective date as set forth in the preceding subsection 5.1(c).

(e) Initial Capital Payment. (1) Upon taking office, the first Board of Directors elected or designated pursuant to these Bylaws shall determine the budget, as defined in this Section, for the period commencing sixty (60) days after such election and ending on the last day of the fiscal year in which such election or designation occurs. The budget shall be approved by the Owners as provided under subsections 5.1(b)(1), 5.1(b)(2) and 5.1(b)(3) above. Assessments shall be levied and become a lien against the Owners during such period as provided in subsection 5.1(c) of this Section.

(2) The Declarant, as the agent of the Board of Directors, will collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to: one-sixth (1/6) of the estimated annual assessment for Common Expenses for such purchaser's Unit or Timeshare Interest. The

Declarant will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the Association. Such funds shall not be credited against any Owner's obligations for assessments.

(f) 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 any 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 Owner shall continue to pay each annual assessment at the rate established for the previous fiscal year until notice of the adjusted payment and new annual or adjusted budget shall have been delivered and ratified by the Owners.

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

Section 5.2. Payment of Common Expenses. Each Owner shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 5.1 of this Article V. No Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of part of the Common Expenses assessed against his Unit or Timeshare Interest subsequent to the date of recordation of a conveyance by him in fee of such Unit or Timeshare Interest, provided notice is given to the Association prior to conveyance. Prior to 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 or Timeshare Interest shall be jointly and severally liable with the selling 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 Owner amounts paid by the purchaser therefor; provided, however, any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Owner within ten (10) working days following a written request therefor to the Board of Directors or Managing Agent and such purchaser shall not be liable for, nor shall the Unit or Timeshare Interest conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each Mortgagee who comes into possession of a Condominium Unit or Timeshare Interest by virtue of foreclo-

sure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit or Timeshare Interest free of any claims for unpaid assessments or charges against such Unit or Timeshare Interest which accrue prior to the time such 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 Units or Timeshare Interest including the mortgaged Unit or Timeshare Interest.

Section 5.3. Collection of Assessments. The Board of Directors or the Managing Agent, at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Owner which remain unpaid for more than thirty (30) 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 eighteen percent (18%) per year of the overdue assessment or installment. *1 1/2 % - me*

Section 5.4. Statement of Common Expenses. The Board of Directors shall promptly provide any Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Owner. Such statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association Board of Directors and every 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 5.5. Maintenance, Repair, Replacement and Other Common Expenses.

(a) By the Board of Directors. The Board of Directors shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than fifty percent (50%) of the Board of Directors such expense was necessitated by the intentional or negligent act or omission of any Owner, his family, guest, invitees or lessees, in which event the cost of repair or deficiency shall be paid by such Owner) of all of the Common Elements and Common Furnishings, including the Limited Common Elements as defined herein or in the Declaration or Supplement 1 Declaration, whether located inside or outside of the Units, the cost of which shall be charged to all Owners as a Common Expense, provided, however, that Unit Owners (excluding Timeshare Interest Owners) shall perform normal maintenance on the Limited Common elements appurtenant to his Unit and any portion of the remaining Common Elements which the Board of

Directors pursuant to the Rules and Regulations has given him permission to utilize, including without limitation the items enumerated in subsection 5.5(b) hereof. The Board of Directors may impose a reasonable monthly charge upon such Unit Owner or Timeshare Interest Owner to whose Unit a Limited Common Element parking space is appurtenant for the upkeep of such parking space; such charges may differ in amount but shall be uniform for different grades or levels of parking spaces.

(b) By the Unit Owner. (1) Each Unit Owner shall keep his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure to make any of the repairs required by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Board of Directors is responsible.

*owner*  
*owner*  
(2) The Unit Owner of any Unit to which a patio, terrace or balcony is appurtenant shall perform the normal maintenance for such patio, terrace or balcony including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All structural repair or replacement shall be made by the Board of Directors as a Common Expense, as provided in subsection (a) above.


(3) Any Unit Owner permitted by the Board of Directors to use a specific portion of the Common Elements for storage is responsible for the maintenance and care of such portion and shall use such portion in a safe and sanitary manner.

(c) By the Timeshare Interest Owner. Except as otherwise provided in the Supplemental Declaration, by direction of the Association, by express consent of all Timeshare Interest Owners, or required to prevent damage or injury to persons or property in an emergency, no Timeshare Interest Owner shall make improvements, declarations or repairs to any Unit. No Timeshare Interest Owner shall create or permit to exist any nuisance to be done or kept in any Unit which would increase the rate of insurance upon the Unit or the Common Furnishings. Maintenance and repair of the Unit, acquisition, maintenance, repair and



replacement of Common Furnishings shall be under the direction and control of the Association.

(d) Manner of Repair and Replacement. All repairs and replacements (including Common Furnishings) shall be substantially similar to the original construction and installation and shall be of first-class quality. The method of approving payment vouchers for all repairs and replacements shall be determined by the Board of Directors.

 Section 5.6. Alterations or Improvements by Board of Directors. Except during the period of Declarant control, whenever in the judgment of the Board of Directors alterations or improvements estimated to cost in excess of Five Thousand Dollars (\$5,000) during any period of five (5) consecutive months are considered necessary, the making of such alterations or improvements shall first be approved by a majority of the Owners, and the Board of Directors shall proceed with such alterations or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any alterations or improvements estimated to cost Five Thousand Dollars (\$5,000) or less during any period of five (5) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if, in the opinion of not less than fifty percent (50%) of the members of the Board of Directors, such alterations or improvements are exclusively or primarily for the benefit of the Owner or Owners requesting the same, such requesting Owners shall be assessed therefor in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

Section 5.7. Alterations or Improvements by Unit Owners.

(a) No Unit Owner shall make any structural alteration or improvement in or to his Unit, nor shall any Unit Owner paint or alter the exterior appearance of his Unit, the exterior of the Common Elements or any portion of the Condominium without prior written consent of the Board of Directors. The Board of Directors shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alterations or improvement in such Unit Owner's Unit within thirty (30) day after such request, and failure to do so within the stipulated time shall constitute a consent by the alteration or improvement. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any Unit requires execution by the Association, and provided consent has been given by the Board of Directors, then the application shall be executed on behalf of

the Association by the Board of Directors only, without, however, incurring any liability on the part of the Board of Directors or any of them to any contractor, subcontractor or materialmen on account of such addition, alteration or improvement, or to any person having claim for injury or damage to property arising therefrom.

(b) Other than the relocation of Unit boundaries and the subdividing of Units by the Declarant under its reserved Development Rights, so long as the Declarant owns any Unit or any interest therein, the relocation of boundaries between Units and the subdividing of Units without the prior written consent of the Declarant is prohibited. If consent of the Declarant is required under this section, no relocation of Unit boundaries nor subdivision of Units shall be valid unless an amendment to this Declaration is prepared and recorded as required by the Condominium Act and the consent of the Declarant to the amendment is endorsed thereon. The Secretary of the Association shall record any necessary amendment to the Declaration as required by the Condominium Act.

(c) The provisions in this Section 5.7 shall not apply to Units owned by the Declarant provided, however, that any construction or alterations by Declarant shall be architecturally compatible with existing Units. The Declarant shall have the right to make such alterations or subdivisions without the consent of the Board of Directors or Unit Owners or Mortgagees.

Section 5.8. Restrictions on Use of Units; Rules and Regulations.

(a) Generally. Each Unit and the Common Elements shall be occupied and used as follows:

(1) Except as provided in the Amended Declaration or Supplemental Declaration, no Unit shall be used for other than housing and the related common purposes for which the Property was designed. Nothing in these Bylaws shall be construed to prohibit the Declarant from using any Unit owned by Declarant for promotional, marketing or display purposes or from using any appropriate portion of the Common Elements for closing of sales of Condominium Units.

(2, Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Board of Directors. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the can-

cellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed in the Common Elements.

(3) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a Common Expense.

(4) No Owner shall obstruct any of the Common Elements nor shall any Owner store anything upon any of the Common Elements without the written approval of the Board of Directors. Vehicular parking upon the Common Elements may be regulated or assigned by the Board of Directors or Declarant as provided in the Declaration or Supplemental Declaration. Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Board of Directors or the Covenants Committee, as appropriate.

(5) The Common Elements shall be used only for the furnishing of the services and facilities (including recreational amenities and/or restaurant facilities if available) for which the same are reasonably suited and which are incident to the use and occupancy of the Units.

(6) Except such trailers, vehicles used by the Declarant or its agents incidental to the exercise of its Reserved Development Rights and for sales purposes as set forth in the Amended Declaration, no trailers, campers, recreational vehicles or boats may be parked on the Property without prior written approval of the Board of Directors. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements.

(7) The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Common Elements. Except in those Units subject to timeshare interests, the keeping of small, orderly domestic pets (e.g., dogs, cats or caged birds) not to exceed one per Unit without the approval of the Board of Directors, is permitted sub-

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ject to the Rules and Regulations adopted by the Board of Directors; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon ten (10) days' written notice from the Board of Directors. Such pets shall not be permitted upon the Common Elements unless accompanied by an adult and unless carried or leashed. Any Unit Owner who keeps and maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Condominium, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium. All pets shall be registered with the Board of Directors and shall otherwise be registered and inoculated as required by law.

(8) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from any Unit or Common Elements without the prior written approval of the Board of Directors. The provisions of this subparagraph shall not be applicable to the institutional holder of any first mortgage which comes into possession of any Unit by reason of any remedies provided for in the mortgage, foreclosure of any mortgage or any deed of trust or other proceeding in lieu of foreclosure.

(b) Timeshare Interest Owners.

(1) No Owner shall, during his Time Interval, make, or suffer to be made, any long distance telephone call which results in the addition of any charge to the telephone service in the Unit. Should the provision of the preceding sentence be violated, the Owner of the Time Interval during which such charge was incurred shall pay the charge, and in addition, a fee of Ten Dollars (\$10.00) for the first charge, and a fee of Five Dollars (\$5.00) for each charge thereafter, during his Time Interval.

(2) Should any person fail to vacate the Unit at the end of the Time Interval during which he is entitled to occupy it, without the prior written approval of the Owner of the succeeding Use Period, then he shall pay to the Owner of the succeeding Use Period a sum equal to three (3) times the maximum daily rental value charged for a comparable Condominium Unit in Taos, New Mexico, for each day during which he wrongfully holds over. This payment shall be in addition to all other remedies provided by law.

(3) Should any Owner, through negligence or intentional act, so damage the Unit, during his term of occupancy, that, in the sole judgment of the Association, the Unit is unfit for occupancy by the Owner of the succeeding Use Period, the Association may rent a comparable Condominium Unit for the use of the Owners of the succeeding Use period or Use periods until repairs to the Unit are completed. The cost of all such rentals shall be borne by the Timeshare Interest Owner causing the damages, and it shall become a lien against his Timeshare Interest in the manner provided for creation of liens for assessment.

(c) Each Unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and amended by the Board of Directors. Copies of the Rules and Regulations shall be furnished by the Board of Directors to each Owner. Amendments to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Owner upon request.

Section 5.9. Right of Access. By acceptance of his deed of conveyance, each Owner thereby grants a right of access to his Unit, as provided by Section 47-7C-7 of the Condominium Act and the Declaration, to the Board of Directors or the Managing Agent, or any other person authorized by the Board of Directors or the Managing Agent, or any other person authorized by the Board of Directors or the Managing Agent, or any group of the foregoing, for the purpose of enabling the exercise and discharge of their respective power and responsibilities, including without limitation making inspections, correcting any condition originating in his Unit, and threatening another Unit or the Common Elements, performing installations, alterations or repairs to the mechanical or electrical services to the Common Elements in his Unit or elsewhere in the Property or to correct any condition which violates any mortgage; provided, however, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

Section 5.10. Utility Charges. The cost of utilities, serving the Condominium shall be a Common Expense.

Section 5.1 Parking Spaces. Each of the parking spaces located on the Property shall be subject to designation as Limited Common Elements appurtenant to certain designated Units pursuant to the reservation set forth in Article III of the Declaration. All other parking spaces designated as such on the Plats and Plans shall be used by the Owners for self-service

parking purposes on a "first come, first served" basis, provided, however, that no Owner shall park more than two (2) vehicles (owned or leased by such Owner, a member of his family or a tenant residing in his Unit) on the Common Element parking spaces without the prior written consent of the Board of Directors. The cost of maintenance and repair of all parking areas shall be a Common Expense, provided, however, that the Board of Directors may impose a reasonable charge upon Owners to whose Units a Limited Common Element parking space is appurtenant pursuant to Article V, Section 5.5(a) hereof. Such charge may be increased yearly by resolution of the Board of Directors only in proportion to the increase in the total budget for Common Expenses from year to year. While any buildings under construction or completed are owned by Declarant, use of the parking spaces adjacent to that building may be restricted to Declarant's use for sales purposes, upon consent of the Board.

Section 5.12. Use of Common Elements. No Unit Owner shall place or cause or permit to be placed on the Common Elements (other than Limited Common Elements) any furniture, packages or objects of any kind.

Section 5.13. Disclaimer of Bailee Liability. The Board of Directors, the Association, any 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 an 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 VI

### Insurance

Section 6.1. Authority to Purchase. (a) Except as otherwise provided in Section 6.5 of this Article VI, all insurance policies relating to the Property shall be purchased by the Board of Directors. In the event the insurance described herein is not reasonably available, the Board of Directors shall promptly cause notice of that fact to be hand-delivered or sent pre-paid by United States Mail to all Unit Owners. 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 a demonstrably unreasonable cost.

(b) Each such policy shall provide that:

(1) 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 Owners, and their respective agents, employees, guests and, in the case of the Owners, the members of their households;

(2) No act or omission by any Owner (unless acting within the scope of his authority on behalf of the Association) shall void the policy or be a condition to recovery under the policy;

(3) Such policy shall not be substantially modified or suspended due to the act or omission of any Owner (including his invitees, agents and employees) or of any member (acting within the scope of his authority for the Association), 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 such defect within thirty (30) days after such demand.

(4) Such policy may not be cancelled 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 Mortgagees registered with the Association as provided in Section 8.1.

(c) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner.

(d) 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 Mortgagees.

Section 6.2. Physical Damage Insurance. (a) 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, debris removal, cost of demolition and water damage endorsements, insuring the entire Property, including all of the Units and Common Furnishings initially installed therein by the Declarant and replacements thereto installed by the Declarant or Association but excluding furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners, together with other service machinery contained therein, and covering the

interests of the Association, the Board of Directors and all Owners and their Mortgagees, as their interest may appear (subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors and the Insurance Trustee contained in Sections 6.6 and 6.7 of this Article VI), 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 (such amount to be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage).

(b) Such policy shall also provide:

(1) 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 and, in such event, that the insurer shall pay on the basis of the agreed amount endorsement as though a total loss had occurred;

(2) The following endorsements (or equivalent): (i) "no control;" (ii) "contingent liability from operation of building laws or codes;" (iii) "increased cost of construction" or "condominium replacement cost;" and (iv) "agreed amount" or elimination of co-insurance clause; and

(3) That any "other insurance" clause expressly exclude individual Owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' 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 Owners or their Mortgagees unless otherwise required by law.

(c) 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 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 sources 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 physi-



cal damage insurance to be secured pursuant to this Section 6.2. All 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 (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for directors) 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 Owner and the Declarant against any liability to the public or to the 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: (i) 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; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability to an Owner because of negligent acts of the Association or of another Owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000) 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 shall obtain and maintain:

(a) 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: (1) name the Association as an obligee; (2) be written in an amount not less than 1.5 times the estimated annual operation expenses of the Condominium, including reserves; and (3) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) 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;

(c) workmen's compensation insurance if and to the extent necessary to meet the requirements of law;

(d) if considered necessary, broad form machinery and pressure vessel explosion insurance; and

(e) 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 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;" provided, however, that no 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 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 an Owner. All such policies shall contain waivers of subrogation. No Owners shall obtain separate insurance policies except as provided in this Section 5.

Section 6.6. Board of Directors as Trustee. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Owners, their Mortgagees and the Declarant, as their interests may appear.

Section 6.7. Board of Directors as Agents. The Board of Directors is hereby irrevocably appointed the agent for each Owner, each Mortgagee, other named insureds and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to adjust and settle all claims arising under insurance policies purchased by the Board of Directors and to execute and deliver releases upon the payment of claims.

## ARTICLE VII

### Repair and Reconstruction After Fire or Other Casualty

#### Section 7.1. When Repair and Reconstruction Are Required.

Except as otherwise provided in Section 7.4 of this Article, in the event of damage to or destruction of all or any of the buildings as a result of fire or other casualty, the Board of Directors, under the direction of the Insurance Trustee, shall arrange for and supervise the prompt repair and restoration of the Property and Common Furnishings, including any damaged Units and Common Furnishings initially installed thereby by the Declarant or Association, and replacement thereof installed by the Declarant or Association, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Owners in the Units. Notwithstanding the foregoing, each Owner other than a Timeshare Interest Owner shall have the right to supervise the redecorating of his own Unit.

Section 7.2. Procedure for Reconstruction and Repair.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to any building, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the Property and Common Furnishings (including any damaged Units and Common Furnishings initially installed by Declarant, and the replacements thereof, but not including any other furniture, furnishings, fixtures or equipment installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair and funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and a special assessment therefor shall be levied.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property.

Section 7.3. Disbursements of Construction Funds.

(a) Construction Funds and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of

the costs of reconstruction and repair.

(b) Surplus. It shall be presumed that the first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Owners in proportion to their Percentage Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.

(c) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the Units.

(d) Certificates. The Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (1) whether the damaged Property is required to be reconstructed and repaired; (2) the name of the payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and (3) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Insurance Trustee promptly after request.

Section 7.4. When Reconstruction Is Not Required. In the event of insubstantial damage to the Common Elements and if the Board of Directors shall elect not to repair the same then in such event any insurance proceeds received on account of such damage shall be distributed among all Owners in proportion to their respective Percentage Interest. If the Condominium shall be terminated pursuant to Section 47-7B-18 of the Condominium Act, the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board of Directors or the Insurance Trustee, as the case may be, among all Owners in proportion to their respective interests, after first paying out of the share of each Owner, to the extent sufficient thereof, the amount of any unpaid liens on his Unit in the order of priority of such liens.

## ARTICLE VIII

### Mortgages

Section 8.1. Notice to Board of Directors. An Owner who

mortgages his Unit or Timeshare Interest shall notify the Board of Directors of the name and address of his Mortgagee and shall file a copy of the Note and Mortgage with the Board of Directors.

Section 8.2. Notice of Default, Casualty or Condemnation.

The Board of Directors when giving notice to any Owner of a default in paying an assessment for Common Expenses or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such Unit. Each Mortgagee shall also be promptly notified of any casualty giving rise to a possible claim under any insurance purchased under Article VI, of all actions taken under Article VII and of any taking in condemnation or by eminent domain and actions of the Association with respect thereto. For purposes of this Section only, when notice is to be given to a Mortgagee, the Board of Directors shall also give such notice to such public or private secondary mortgage market entity participating in purchasing or guarantying Mortgages of Units or Interests in the Condominium of which the Board of Directors has notice, including if applicable, the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Federal Home Administration, the Farmer's Home Administration, and the Government National Mortgage Association.

Section 8.3. Notice of Amendment of Declaration or Bylaws.

The Board of Directors shall give notice to all Mortgagees thirty (30) days prior to the date on which the Owners, in accordance with the provisions of these Bylaws, materially amend the Condominium Instruments.

Section 8.4. Notice of Change in Managing Agent. The Board of Directors shall give notice to all Mortgagees thirty (30) days prior to undertaking self-management or changing the Managing Agent and no such change shall be adopted without the written consent of all Mortgagees.

Section 8.5. Mortgagees' Approvals. Other than the exercise of Special Declarant Rights Reserved under the Amended Declaration, unless two-thirds (2/3) of the Mortgagees shall have given their prior written approval, neither the Association nor any Owner shall:

(a) Change the Percentage Interest or obligations of any Unit.

(b) Subdivide, partition or relocate the boundaries of any Unit encumbered by a Mortgage or the Common Elements of the Condominium;

(c) Withdraw the submission of the Property to the

Condominium Act, except as provided by the Declaration or the Condominium Act.

Section 8.6. Other Rights of Mortgagees. All Mortgagees or their representatives shall be entitled to attend and speak at meetings of the Association. All such Mortgagees shall have the right to examine the books and records of the Condominium, and to require the submission of annual financial reports and other budgetary information.

#### ARTICLE IX

##### Compliance and Default

Section 9.1. Relief. Each Owner shall be governed by, and shall comply with, all of the terms of the Condominium Instruments and the Condominium Act as any of these instruments 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 an Owner shall entitle the Association, acting through its Board of Directors or through the Managing Agent, to the following relief:

(a) Additional Liability. Each 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 any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances.

(b) Costs and Attorneys' Fees. In any proceeding arising out of any alleged default by an 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.

(c) No Waiver of Rights. The failure of the Association, the Board of Directors or of an 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 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 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.

(d) Interest. In the event of a default by any 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 eighteen percent (18%) per annum from the due date until paid.

(e) Abating and Enjoining Violations by 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 Supplemental Declaration or the Condominium Act shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: (1) 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 Owner, any structure, thing or condition that may exist thereon 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 (2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

(f) 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 of 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 Owner and shall not constitute an election of remedies.

Section 9.2. Lien for Assessments. (a) The total annual assessment of each 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 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 Owner of notice of such special assessment. The Board of Directors or the

6 months  
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Managing Agent may file or record such other or further notice of any such lien, or such other or further document, to conform the establishment and priority of such lien.

(b) In any case where an assessment against an Owner is payable in installments, upon a default by such 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 Owner and his Mortgagee by the Board of Directors or the Managing Agent.

(c) 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 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.

(d) 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 9.3. Supplemental Enforcement of the Lien. In addition to the proceedings at law or in equity for the enforcement of the lien established by the Amended Declaration, Supplemental 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 9.4. 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 prior first mortgage made in good faith for value received; provided, however, that such Mortgagee 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 from 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.

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#### ARTICLE X

##### Amendments to Bylaws

Section 10.1. Amendments. These Bylaws may not be modified or amended except by vote of agreement of Owners to which more than sixty-seven percent (67%) of the votes in the Association are allocated present at the meeting in person or by proxy provided, however, that until the expiration of the maximum time of Declarant Control permitted by Section 47-7C-3 of the Condominium Act, (a) Section 2 of Article II, (b) Section 9 of Article II, (c) Section 1 of Article III, and (d) Section 2 of this Article X 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 aggregate Percentage Interests of the Condominium.

Section 10.2. Approval of Mortgagees. These Bylaws contain provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions in these Bylaws are to be construed as covenants for the protection of such Mortgagees on which they may rely in making loans secured by Mortgagees. Accordingly and subject to Section 8.5 hereof, no amendment or modification of these Bylaws impairing or affecting such rights, priorities, remedies or interests of a Mortgagee shall be adopted without the prior written consent of such Mortgagees.

#### ARTICLE XI

##### Miscellaneous

Section 11.1. 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), (a) 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 (b) if to the Unit Owners' 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 11.2. Captions. The captions hereof 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 11.3. 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, the President and Secretary have caused these Bylaws to be executed and attested on behalf of the Association.

BENCHMARK CONDOMINIUM ASSOCIATION

By Edmund P. Conner  
Its President

ATTEST:

By Michelle Vigil  
Its Secretary

RECEIVED  
APR 10 1985  
N.M. ST. CORP. COMM.  
Corp./Franchise Tax Dept.