
*Bylaws of
Windchime
Condominium Association*

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Windchime*

Condominium Association

Table of Contents

Article 1		1
1.1	Applicability	1
1.2	Compliance	1
1.3	Office	1
Article 2 Unit Owners' Association		1
2.1	Composition	1
2.2	Membership	2
2.3	Annual Meetings	2
2.4	Place of Meeting	2
2.5	Special Meetings	2
2.6	Notice of Meetings	2
2.7	Adjournment of Meetings	3
2.8	Order of Business	3
2.9	Title to Units	3
2.10	Voting	4
2.11	Proxies	4
2.12	Quorum	4
2.13	Conduct of Meetings	4
Article 3 Board of Directors		4
3.1	Number and Qualification	4
3.2	Powers and Duties	5
3.3	Managing Agent	7
3.4	Election and Term of Office	9
3.5	Removal or Resignation of Directors	9
3.6	Vacancies	10
3.7	Organizational Meeting	10
3.8	Regular Meetings	10
3.9	Special Meetings	10
3.10	Waiver of Notice	11
3.11	Quorum of Board of Directors	11
3.12	Fidelity Bonds	11
3.13	Compensation	11
3.14	Conduct of Meetings	11
3.15	Action Without Meeting	11
3.16	Liability of the Directors, Officers, Owners and Association	11
3.17	Common or Interested Directors	12
3.18	Covenants Committee	13

	14
	14
Article 4 Officers	14
4.1 Designation	14
4.2 Election of Officers	14
4.3 Removal of Officers	14
4.4 President	15
4.5 Vice President	15
4.6 Secretary	15
4.7 Treasurer	15
4.8 Execution of Documents	15
4.9 Compensation of Officers	15
Article 5 Operation of the Property	15
5.1 Determination of Common Expenses and Assessments	18
5.2 Payment of Common Expenses	19
5.3 Collection of Assessments	19
5.4 Statement of Common Expenses	19
5.5 Additions, Alterations or Improvements by Board.	20
5.6 Utility Charges	20
5.7 Parking Spaces	20
5.8 Use of Common Elements	20
5.9 Disclaimer of Bailee Liability	20
Article 6 Insurance	20
6.1 Authority to Purchase	21
6.2 Physical Damage Insurance	22
6.3 Liability Insurance	23
6.4 Other Insurance	23
6.5 Separate Insurance	24
6.6 Insurance Trustee	24
6.7 Board of Directors as Agents	24
Article 7 Repair and Reconstruction After Fire or Other Casualty	24
7.1 When Repair and Reconstruction are Required	24
7.2 Procedure for Reconstruction and Repair	25
7.3 Disbursements of Construction Funds	25
7.4 When Reconstruction is Not Required	25
Article 8 Mortgages	26
8.1 Notice to Board of Directors	26
8.2 Notice of Default, Casualty or Condemnation	26
8.3 Notice and Approval of Amendment of Declaration and Bylaws	26
8.4 Other Rights of Eligible Mortgagees	27

Article 9 Compliance and Default	27
9.1 Relief	27
9.2 Lien for Assessments	29
9.3 Supplemental Enforcement of the Lien	30
9.4 Subordination and Mortgage Protection	30
Article 10 Amendments to Bylaws	30
10.1 Amendments	30
10.2 Approval of Eligible Mortgagees	31
Article 11 Miscellaneous	31
11.1 Notices	31
11.2 Captions	31
11.3 Gender	31

Article 1

1.1 Applicability. These Bylaws provide for governance of the Condominium¹ pursuant to the requirements of §47-7C-6 of the Condominium Act. The Property, located in Angel Fire, New Mexico, and more particularly described in the Amended and Restated Declaration, has been submitted to the provisions of the Condominium Act by recordation of the Amended and Restated Declaration among the land records of Colfax County in Book 4 at page 7175.

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

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

Article 2 Unit Owners' Association

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

Association by the Condominium Act and the Declaration. Except as to those matters which the Condominium Act specifically requires to be performed by the vote of the Association, the foregoing responsibilities shall be performed by the Board of Directors or Managing Agent as more particularly set forth in Article 3 of these Bylaws.

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

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

2.3 Annual Meetings. The annual meetings of the Association shall be held no later than thirty-five (35) days before the beginning of the fiscal year. At such annual meetings the Board of Directors shall be elected by ballot of the Unit Owners in accordance with the requirements of §3.4 of these Bylaws. So long as the Declarant shall own Units representing more than twenty percent (20%) of the Units which may be created pursuant to the Declaration (but in no event after the expiration of the maximum time permitted by §47-7C-3 of the Condominium Act), the Declarant shall be entitled to designate the maximum number of Directors allowed by the Act, who shall serve for the shortest term.

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 Unit Owners as may be designated by the Board of Directors.

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

On the earlier of (a) a day within one hundred eighty (180) days after deeds of conveyance of Units representing eighty percent (80%) or more of the Units which may be created pursuant to the Declaration shall have been delivered to Unit Owners by the Declarant or (b) the expiration of the maximum time permitted by §47-7C-3 of the Condominium Act, or (c) thirty (30) days after written notice by Declarant, a special meeting of the Association shall be held at which time all of the members of the Board of Directors designated by the Declarant shall resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, shall thereupon elect successor members of the Board of Directors to act in the place and stead of those resigning.

2.6 Notice of Meetings. The Secretary shall mail to each Unit Owner a notice of each meeting of the Association at least ten (10) but not more than sixty (60) days prior to such meeting, stating the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a Director or officer. The mailing of a notice of meeting in the manner provided in this Section and §11.1 of these Bylaws shall be considered service of notice.

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

2.8 Order of Business. The order of business of all meetings of the Association shall be as follows:

- (a) Roll call and determination of quorum;
- (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.

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 Condominium Units in the Condominium in its own name.

2.10 Voting.

(a) The vote to which each Unit Owner is entitled shall be the voting interest assigned to his Unit in the Declaration. Where the ownership of a Unit is in more than one person, the person who shall be entitled to cast the vote of such Unit shall be the person named in a certificate executed by all of the Owners of such Unit and filed with the Secretary or, in the absence of such named person from the meeting, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in accordance with the agreement of a majority of them pursuant to §47-7C-10 of the Condominium Act. Such certificate shall be valid until revoked by a subsequent certificate similarly executed.

(b) Subject to the requirements of §47-7C-10 of the Condominium Act, wherever the approval or disapproval of a Unit Owner is required by the Condominium Act, the Declaration or these Bylaws, such approval or disapproval shall be made only by the person who would be entitled to cast the vote of such Unit at any meeting of the Association. Except where a greater number is required by the Condominium Act, the Declaration or these Bylaws, a majority of the Unit Owners entitled to cast fifty-one percent (51%) or more of the votes in the Association, present, in person or by proxy, at one time at a duly convened meeting at which a quorum is present, is required to adopt decisions at any meeting of the Association.

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

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

(e) No votes allocated to a Unit owned by the Association may be cast.

2.11 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of only another Unit Owner, an Eligible Mortgagee or the Declarant. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Unit. No proxy shall in any event be valid for a period in excess of ninety (90) days after the execution thereof.

2.12 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Unit Owners entitled to cast fifty percent (50%) or more of the votes in the Association shall constitute a quorum at all meetings of the Association.

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

Article 3

Board of Directors

3.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. Until deeds of conveyance representing more than eighty percent (80%) of the Units which may be created pursuant to the Declaration shall have been delivered to Unit Owners by the Declarant, and thereafter until their successors shall have been elected by the Unit Owners, the Board of Directors shall consist of such persons as may be designated by the Declarant, *provided, however*, that the foregoing power of designation shall not exceed the restrictions of §47-7C-3 of the Condominium Act. The Board of Directors shall be composed of three (3) persons, all of whom shall

NOV 12 1993

be Unit Owners or spouses of Unit Owners, Eligible Mortgagees (or designees of Eligible Mortgagees) or designees of the Declarant. *Provided, however,* that, anything in these Bylaws to the contrary notwithstanding, so long as the Declarant owns Units representing twenty percent (20%) or more of the Units (but in no event after the expiration of the maximum time permitted by §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.

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

3.2.1 Prepare an annual budget, in which there shall be established the assessments of each Unit Owner for Common Expenses pursuant to Article 5, herein.

3.2.2 Make assessments against Unit Owners to defray the costs and expenses of the Condominium, establish the means and methods of collecting such assessments from the Unit Owners and establish the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Unit Owner for his proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.

3.2.3 Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Condominium.

3.2.4 Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements and provide services

for the Property and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment and supplies to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

3.2.5 Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Property.

3.2.6 Make and amend the Rules and Regulations.

3.2.7 Open bank accounts on behalf of the Association and designate the signatories thereon.

3.2.8 Make, or contract for the making of, repairs, additions and improvements to or alterations of the Property, and repairs to and restoration of the Property, in accordance with the Condominium Act, the Declaration and these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

3.2.9 Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations and act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding.

3.2.10 Obtain and carry insurance against casualties and liabilities, as provided in Article 4 of these Bylaws, pay the premiums therefor and adjust and settle any claims thereunder.

3.2.11 Pay the cost of all authorized services rendered to the Association and not billed to Unit Owners of individual Units or otherwise provided for in Sections 5.1 and 5.2 of these Bylaws.

3.2.12 Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the expenses of maintenance and repair of the Common Elements and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the Unit Owners, their duly authorized agents or attorneys, during general business hours on working days at the time and in the manner set and announced by the Board of Directors for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with accepted accounting practices.

3.2.13 Notify an Eligible Mortgagee of any default hereunder by the Unit Owner of the Unit subject to such Mortgage, in the event such default continues for a period exceeding thirty (30) days.

- 3.2.14 Borrow money on behalf of the Condominium when required relating to the operation, care, upkeep and maintenance of the Common Elements, *provided, however,* that the consent of at least two-thirds (2/3) in number and in Percentage Interest of all Unit Owners, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required to borrow any sum in excess of Five Thousand Dollars (\$5,000.00). If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this paragraph 3.2.14 is not repaid by the Association, a Unit Owner who pays to the creditor such proportion thereof as his Percentage Interest bears to the total Percentage Interests in the Condominium shall be entitled to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such Unit Owner's Condominium Unit.

3.2.15 Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association.

3.2.16 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.

3.2.17 Furnish the statement required by §47-7D-9 of the Condominium Act, within ten (10) working days after the receipt of a written request therefor from any Unit Owners substantially in the form set forth on Exhibit "A" to these Bylaws and designated "Resale Certificate."

3.2.18 File all required governmental reports.

3.2.19 Do such other things and acts not inconsistent with the Condominium Act, the Declaration or these Bylaws which the Board of Directors may be authorized to do by a resolution of the Association.

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.

3.3.1 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 five (5) 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 expert in the areas of condominium insurance, accounting, labor relations and condominium regulation.

3.3.2 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 3.2.1, 3.2.3, 3.2.4, 3.2.5, 3.2.8 through 3.2.14, 3.2.18 and 3.2.19 of these Bylaws. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these Bylaws other than the powers set forth in paragraphs 3.2.2, 3.2.6, 3.2.7, 3.2.15, 3.2.16, and 3.2.17 of these Bylaws. The Managing Agent shall perform the obligations, duties and services relating to management of the property, the rights of Mortgagees and the maintenance of reserve funds in compliance with the provisions of these Bylaws.

3.3.3 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:

- the cash method of accounting shall be employed;
- two (2) or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
- cash accounts of the Association shall not be commingled with any other accounts;
- no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder's fees, service fees or otherwise; any discounts received shall benefit the Association;
- any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and
- an annual financial report shall be prepared for the Association disclosing:
 - all income and disbursement activity for the preceding period;

- the status of all accounts in an "actual" versus "projected" (budget) format; and
- any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or fifteen percent (15%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts).

3.3.4 Limitations. Subject to the provisions of §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. The Association shall not employ a new Managing Agent without sixty (60) days' prior written notice to, and approval by, Eligible Mortgagees. Any contract with the Managing Agent must provide that it may be terminated with cause on no more than three (3) days' written notice.

3.4 Election and Term of Office.

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

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

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

3.4.2.2 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.

3.5 Removal or Resignation of Members of the Board of Directors. Except with respect to Directors designated by Declarant, at any regular or special meeting duly

called, any one or more of the members of the Board of Directors may be removed with or without cause by a Majority of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Unit Owners shall be given at least seven (7) days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Board of Directors may resign at any time and shall be deemed to have resigned upon disposition of his Unit.

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 §3.5, so long as the Declarant owns twenty percent (20%) 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 §47-7C-3 of the Condominium Act) the Declarant shall designate the successor to any resigned or removed member previously designated by the Declarant.

3.7 Organizational Meeting. The first meeting of the Board of Directors following the annual meeting of the Association shall be held within three (3) days thereafter at such time and place as shall be fixed by the Association at the meeting at which such Board of Directors shall have been elected. No notice shall be necessary to the Directors who individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

3.8 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but such meetings shall be held at least once every six (6) months during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, by mail or telegraph, at least three (3) days prior to the day named for such meeting.

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

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.

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.

3.12 Fidelity Bonds. As required by §6.4 of these Bylaws, fidelity bonds shall be obtained in an amount not less than one and one-half (1½) 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 Association, including the Managing Agent, handling or responsible for Condominium funds. The premiums on such bonds shall constitute a Common Expense.

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

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, these Bylaws or the Condominium Act.

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.

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

3.16.1 To the extent allowed by law, the officers and members of the Board of Directors shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad

faith. To the extent allowed by the New Mexico Non-Profit Corporation Act and the Condominium Act, the Association hereby indemnifies and holds harmless and agrees to defend each of the officers and Directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Condominium Act, the Declaration or these Bylaws. Officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Unit Owner arising out of any contract made by the officers or Board of Directors, or out of the aforesaid indemnity in favor of the members of the Board of Directors or officers, or for damages as a result of injuries arising in connection with the Common Elements solely by virtue of his ownership of a Percentage Interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by his Percentage Interest. Every agreement made by the officers, the Board of Directors or the Managing Agent on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to the total liability thereunder multiplied by his Common Expense Liability.

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

3.17 Common or Interested Directors. Each member of the Board of Directors shall exercise his powers and duties in good faith and with a view of the interests of the Condominium. No contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the Directors of the Association are Directors or officers or are pecuniarily or otherwise interested is either void or voidable because any such Director is present at the meeting of the Board of Directors or any committee thereof

which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

3.17.1 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

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

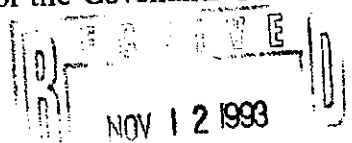
3.17.3 The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested director may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if such Director were not such Director or officer of such Association or not so interested.

3.18 Covenants Committee. The Board of Directors shall establish a Covenants Committee, consisting of five (5) members (at least two (2) of whom shall be Directors) appointed by the Board of Directors, each to serve for a term of three (3) years, in order to assure that the Condominium shall always be maintained in a manner:

- providing for visual harmony and soundness of repair;
- avoiding activities deleterious to the aesthetic or property values of the Condominium;
- furthering the comfort of the Unit Owners, their guests and tenants; and
- promoting the general welfare of the Condominium community.

3.18.1 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 a Unit Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Condominium Act, the Condominium Instruments, the Rules and Regulations or resolutions of the Board of Directors (upon petition of any Unit Owner or upon its own motion). The Covenants Committee shall from time to time, as required, provide interpretations of the Condominium Instruments, Rules and Regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by a Unit 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.

3.18.2 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 4 Officers

4.1 Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Vice President shall be members of the Board of Directors. Any other officers may, but need not, be Unit Owners or members of the Board of Directors.

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

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.

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

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

as shall from time to time be imposed upon him by the Board of Directors or by the President.

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

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 corporation.

4.8 Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of One Thousand Dollars (\$1,000.00) shall be executed by any two persons designated by the Board of Directors. All such instruments for expenditures or obligations of One Thousand Dollars (\$1,000.00) or less may be executed by any one person designated by the Board of Directors.

4.9 Compensation of Officers. No officer who is also a Director shall receive any compensation from the Association for acting as such officer; *provided, however,* that officers may be reimbursed for expenses incurred on behalf of the Association upon approval by the Board of Directors. All amendments to the Declaration required to be executed by the Association shall be executed by the President and the Secretary.

Article 5

Operation of the Property

5.1 Determination of Common Expenses and Assessments Against Unit Owners.

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

5.1.2 Preparation and Approval of Budget.

5.1.2.1 At least eighty (80) days before the beginning of the fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of

maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Board of Directors to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Condominium Act, the Declaration, these Bylaws or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services.

5.1.2.2 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. No later than sixty-five (65) days before the beginning of the fiscal year, the Board of Directors shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Association, if ratified pursuant to §47-7C-3 of the Act.

5.1.2.3 The Board of Directors shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the copy of the budget. Unless a majority of the Unit Owners reject the budget, the budget shall be deemed ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall continue until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Directors.

5.1.2.4 Prior to the creation of any additional Units by the Declarant by the recordation of an amendment to the Declaration submitting such Units or land to the Condominium, the Board of Directors shall send to each Unit 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 Units are added to the Condominium. 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.

5.1.3 Assessment and Payment of Common Expenses. Subject to the provisions of §9.1.1 of these Bylaws, the total amount of the estimated funds required for the operation of the Property set forth in the budget adopted by the Board of Directors and ratified by the Unit Owners shall be assessed against each Unit

Owner in proportion to his respective Common Expense Liability and shall be a lien against each Unit Owner's Unit as provided in §9.2 of these Bylaws. On or before the first day of each fiscal year, and the first day of each succeeding month in such fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board of Directors), one-twelfth (1/12) of such assessment. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners and, upon written request, to each Eligible Mortgagee an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Board of Directors deems advisable, be credited according to each Unit Owner's Common Expense Liability to the next monthly installments due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners after preparation of a revised budget ratified as provided in subparagraphs 5.1.2.2 and 5.1.2.3. 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 periodic assessment due; or (2) in not more than six (6) equal monthly installments, as the Board of Directors may determine.

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

5.1.5 Initial Budget and Capital Payment.

5.1.5.1 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 Unit Owners as provided under subsection 5.1.2.3 above. Assessments shall be levied and become a lien against the Unit Owners during such period as provided in §5.1.3.

5.1.5.2 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 twice: (i) the estimated monthly assessment for Common Expenses for such purchaser's Unit, and (ii) his Limited Common Element charges, if applicable. The Declarant will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the Association.

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

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

5.2 Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of §5.1 of these Bylaws. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit after the date of recordation of a conveyance by him in fee of such Unit, provided notice is given to the Association prior to conveyance. Before or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefor; *provided, however*, any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner as set forth in §47-7D-9 of the Act 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 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 by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium Unit free of any claims for unpaid assessments or charges against such Unit which accrue before the time such Mortgagee comes into possession thereof, except for claims for a *pro rata* share of such assessments or charges resulting from a *pro rata* reallocation of such assessments or charges to all Condominium Units including the mortgaged Condominium Unit.

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 Unit Owner which remain unpaid for more than ten (10) days from the due date for payment thereof. Any assessment, or installment thereof, not paid within ten (10) days after due shall accrue a late charge in the amount of ten percent (10%) of the overdue assessment or installment for each month the assessment or installment is unpaid.

5.4 Statement of Common Expenses. The Board of Directors shall promptly provide any Unit Owner, contract purchaser or Eligible Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner as provided in §47-7C-16 of the Act. Such statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association's Board of Directors and every Unit Owner. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation to the extent permitted by the Condominium Act.

5.5 Additions, Alterations or Improvements by Board. Except during the period of Declarant control, whenever in the judgment of the Board of Directors improvements costing in excess of Five Thousand Dollars (\$5,000.00) during any period of twelve (12) consecutive months, the making of such additions, alterations or improvements shall be approved by a majority of the Unit Owners, and the Board of Directors shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing Five Thousand Dollars (\$5,000.00) or less during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Unit Owners and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if, in the opinion of not less than two-thirds (2/3) of the members of the Board of Directors, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such requesting Unit 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.

5.6 Utility Charges. The cost of utilities serving the Condominium exclusive of the Units shall be a Common Expense.

5.7 Parking Spaces. Parking spaces designated as such on the Plats and Plans shall be used by the Unit Owners for self-service parking purposes on a ~~"first come, first served"~~ ^{1996 Minn. changed to "Assigned"} basis, *provided, however*, that no Unit Owner shall park more than one (1) vehicle (owned or leased by such Unit 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.

5.8 Use of Common Elements. No Unit Owner shall place or cause or permit to be placed on or in the Common Elements (other than in the areas designated as storage areas) any furniture, packages or objects of any kind.

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

Article 6 Insurance

6.1 Authority to Purchase.

6.1.1 Except as otherwise provided in §6.5 of these Bylaws, all insurance policies relating to the Property shall be purchased by the Board of Directors. Neither the Board of Directors nor the Managing Agent nor the Declarant shall be liable for failure to obtain any coverages required by this Article 6 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are so available only at demonstrably unreasonable cost.

6.1.2 Each such policy shall provide that:

- The insurer waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households;

- Such policy shall not be canceled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the defect and neither shall have so cured or undertaken action to cure such defect within thirty (30) days after such demand.
- Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least sixty (60) days' prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Mortgagees.

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

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

6.2 Physical Damage Insurance. The Board of Directors shall obtain and maintain a blanket "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring the entire Property (including all of the Units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by Unit Owners), together with other service machinery contained therein, and covering the interests of the Association, the Board of Directors and all Unit Owners and their Mortgagees, as their interests may appear, (*subject, however, to the loss payment and adjustment provisions in favor of the Board of Directors contained in §§6.6 and 6.7 of these Bylaws*), in an amount equal to one hundred percent (100%) of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, the amount of such insurance shall be redetermined annually by the Board of Directors with the assistance of the insurance company affording such coverage.

Such policy shall also provide:

- (a) 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;

(b) The "agreed amount" or elimination of co-insurance clause; and

(c) That any "other insurance" clause expressly exclude individual Unit Owner's policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual Unit Owner's policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees unless otherwise required by law.

(d) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder together with proof of payment of premiums shall be delivered by the insurer to any Eligible Mortgagee so requesting at least thirty (30) days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board of Directors may determine, of the current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to §6.2 of these Bylaws. All Eligible Mortgagees shall be notified promptly of any event giving rise to a claim under such policy.

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

- a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured;
- hired and non-owned vehicle coverage;
- host liquor liability coverage with respect to events sponsored by the Association;

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- deletion of the normal products exclusion with respect to events sponsored by the Association; and
- a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Association or of another Unit Owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained.

6.4 Other Insurance. The Board of Directors shall obtain and maintain:

6.4.1 adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling, funds of the Association, including the Managing Agent. Such fidelity bonds shall:

- name the Association as an obligee;
- be written in an amount not less than one and one-half (1½) times the estimated annual operation expenses of the Condominium, including reserves; and
- contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

6.4.2 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;

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

6.4.4 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.

6.5 Separate Insurance. Each Unit Owner shall have the right, at his own expense, to obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit normally called "tenants" improvements and

betterments coverage; *provided, however*, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Board of Directors or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies except as provided in §6.5 of these Bylaws.

6.6 Insurance Trustee. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Unit Owners and their Mortgagees, as their interests may appear. All such proceeds shall be paid to the Board of Directors as Trustee for the Unit Owners and their Mortgagees to be applied pursuant to the terms of Article 7 of these Bylaws.

6.7 Board of Directors as Agents. The Board of Directors is hereby irrevocably appointed the agent for each Unit 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 7

Repair and Reconstruction After Fire or Other Casualty

7.1 When Repair and Reconstruction are Required. Except as otherwise provided in §7.4 of these Bylaws, in the event of damage to or destruction of all or any portion of the buildings as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the Buildings (including any damaged Units, and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein by the Declarant, and replacement thereof installed by the Declarant, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

7.2 Procedure for Reconstruction and Repair.

7.2.1 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 such building (including any damaged Units and any floor coverings and kitchen and bathroom fixtures and appliances 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.

7.2.2 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.

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

7.3 Disbursements of Construction Funds.

7.3.1 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 Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair upon order of the Board of Directors.

7.3.2 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 Unit Owners in proportion to their Percentage Interests and shall be distributed in accordance with the priority of interests in each Unit.

7.3.3 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.

7.4 When Reconstruction is Not Required. In the event of substantial damage to the Common Elements and if the Unit Owners 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 Unit Owners and their respective Mortgagees in proportion to their respective Percentage Interest. If the Condominium is terminated pursuant to §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 Unit Owners and their respective Mortgagees in proportion to their respective interests, after first paying out of the share

of each Unit Owner, to the extent sufficient therefor, the amount of any unpaid liens on his Unit in the order of priority of such liens.

Article 8 Mortgages

8.1 Notice to Board of Directors. A Unit Owner who mortgages his Unit shall notify the Board of Directors of the name and address of his Mortgagee and shall file a conformed copy of the Note and Mortgage with the Board of Directors.

8.2 Notice of Default, Casualty or Condemnation. The Board of Directors when giving notice to any Unit 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 Eligible Mortgagee of such Unit. Each Eligible Mortgagee shall also be promptly notified of any casualty giving rise to a possible claim under any insurance purchased under Article 6, of all actions taken under Article 7 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 an Eligible Mortgagee, the Board of Directors shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guaranteeing mortgages of Units in the Condominium if the Board of Directors has notice of such participation.

8.3 Notice and Approval of Amendment of Declaration and Bylaws. The Board of Directors shall give notice to all Eligible Mortgagees thirty (30) days before the date on which the Unit Owners, in accordance with the provisions of these Bylaws, materially amend the Condominium Instruments. The consent of the Unit Owners to which at least fifty-one percent (51%) of the votes in the Association are allocated is required to add or amend any material provisions of the Condominium Instruments of the project which establish, govern or regulate any of the following:

- Voting rights;
- Assessments, assessment liens or subordination of such liens;
- Reserves for maintenance, repair and replacement of the common areas;
- Insurance or Fidelity Bonds;
- Rights to use of the common areas;
- Responsibility for maintenance and repairs;
- Boundaries of any Unit;
- The interests in the common elements;
- Convertibility of Units into Common Elements or of Common Elements into Units;
- Leasing of Units;

- Imposition of any right of first refusal or similar restriction on the right of a unit estate owner to sell, transfer, or otherwise convey his or her unit estate;
- Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on unit estates;
- By act or omission withdraw the submission of the Property to the Condominium Act, except as provided by the Condominium Instruments or the Condominium Act; and

In addition to the Unit Owners' consent, the approval of the holders of mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to mortgages is required to add or amend any material provisions of the Condominium Instruments of the project which establish, govern or regulate the matters set forth in this §8.3.

An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. The constituent documents may provide that an eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

8.4 Other Rights of Eligible Mortgagees. All Eligible Mortgagees or their representatives shall be entitled to attend meetings of the Association and shall have the right to speak thereat. All such Eligible 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 9 Compliance and Default

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

9.1.1 Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include his employees, agents or licensees, but only to the extent that

such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances.

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

* **9.1.3 No Waiver of Rights.** The failure of the Association, the Board of Directors or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Condominium Act shall not constitute a waiver of the right of the Association, the Board of Directors or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association, the Board of Directors or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or the Condominium Act or at law or in equity.

9.1.4 Interest. In the event of a default by any Unit Owner in paying any sum assessed against his Unit other than for Common Expenses which continues for a period in excess of thirty (30) days, the principal amount unpaid shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid.

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

- (a) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach.

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

9.2 Lien for Assessments.

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

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

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

9.2.4 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.

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 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.

9.4 Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a mortgage made in good faith for value received; *provided, however*, that such Mortgage secures a loan made by an 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 10 Amendments to Bylaws

10.1 Amendments. These Bylaws may not be modified or amended except by a vote of fifty-one percent (51%) of the votes in the Condominium, pursuant to the Act, the Declaration and these Bylaws. *Provided, however*, that until the expiration of the maximum time permitted by §47-7C-3 of the Condominium Act, §2.10, and §3.1 of these Bylaws may not be amended without the consent in writing of the Declarant, so long as the Declarant shall be a Unit Owner of Units representing twenty percent (20%) or more of the Units which may be created in the Condominium.

10.2 Approval of Eligible 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 Eligible Mortgagees on which they may rely in making loans secured by a Mortgage. Accordingly, no amendment or modification of these Bylaws impairing or affecting such rights, priorities, remedies or interests of Eligible Mortgagees shall be adopted without the prior written consent of such Eligible Mortgagees.

NOV 12 1993

Article 11
Miscellaneous

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) if:

11.1.1 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

11.1.2 to the Association, the Board of Directors or to the Managing Agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section. If a Unit is owned by more than one person, each such person who so designated an address in writing to the Secretary shall be entitled to receive all notices hereunder.

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

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, these Bylaws have been executed and attested by the President and the Secretary on behalf of the Association, this 10th day of November, 1993.

Windchime Condominium Association

By:

Stanley R. Samuel
Secretary

[Signature]
President

NOV 12 1993

Windchime Condominium			
Unit Allocations			
	Unit	Size	Interest of Unit
	100	573.0	2.6289%
	101	597.4	2.7408%
	102	620.6	2.8473%
	103	600.8	2.7564%
	104	616.4	2.8280%
	105	600.1	2.7532%
	106	624.0	2.8629%
	107	606.2	2.7812%
	201	1041.5	4.7784%
	202	1052.7	4.8297%
	203	1024.6	4.7008%
	204	1052.1	4.8270%
	205	1048.0	4.8082%
	206	1039.2	4.7678%
	210	787.0	3.6107%
	211	806.0	3.6979%
	212	793.4	3.6401%
	213	814.3	3.7360%
	301	1186.2	5.4422%
	302	1185.2	5.4376%
	303	1178.0	5.4046%
	304	1194.0	5.4780%
	305	1187.7	5.4491%
	306	1567.8	7.1930%
Total		21796.2	100.0000%