



DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF  
EASEMENTS, RESTRICTIONS AND COVENANTS  
FOR MOUNTAIN VIEW VILLAS CONDOMINIUM ASSOCIATION, INC.

THIS DECLARATION is made and submitted, effective as of the date it is filed for record by BMWS LLC, hereinafter called "Declarant," pursuant to and in compliance with the New Mexico Condominium Act, Section 47-7A-1, et seq. NMSA 1978, hereinafter called the "Act."

WHEREAS:

1. It is the desire and intention of the Declarant to enable the real estate, located at 3465 Mountain View Angel Fire, NM 87710, ("the property") together with all improvements, buildings, structures and other permanent fixtures of any kind thereon, and all easements, rights, servitudes and privileges in any way appertaining to the property to be owned by the Declarant, its grantees, vendees, successors in interest etc., under that certain type of method of ownership commonly known as "condominium" pursuant to the provisions of the Act; and
2. The Declarant has elected to establish for its benefit and for the mutual benefit of all future owners of the property, or any part hereof, certain easements and rights to the property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance of the property; and
3. The Declarant wants to insure that at all times the several buyers, grantees, mortgagees and other persons acquiring any interest in the property shall enjoy the benefit of, and shall hold their respective interest subject to the rights, easements, and restrictions set forth in this Declaration. *All of which are declared to be in furtherance of a plan to promote and to protect the ownership and to facilitate the proper administration of the property and are established for the purpose of enhancing and perfecting the value of the property as well as the desirability and attractiveness of the property,*

NOW THEREFORE, the Declarant declares as follows:

ARTICLE I  
SUBMISSION TO THE NEW MEXICO CONDOMINIUM ACT

The Declarant hereby submits the property known as MOUNTAIN VIEW VILLAS CONDOMINIUMS, which is more particularly described and shown on Exhibit "1", which Exhibit is fully incorporated herein by reference, as being subject to the Act, as amended from time to time, and subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, which shall be deemed to run with the land and shall be a burden and benefit to all owners of the property or any part thereof, to Declarant, its successors and assigns, and any other persons acquiring or owning an interest in the property, their grantees, successors, assigns, heirs, personal representatives, executors and administrators forever.

The name of the condominium shall be MOUNTAIN VIEW VILLAS CONDOMINIUM. The Condominium is located in Colfax County, New Mexico. The legal description of the property is:

ARTICLE II  
DEFINITIONS AND DESCRIPTIONS OF EXHIBITS

1. Definitions, certain words and terms used in this declaration and the bylaws, unless the context otherwise requires or are otherwise specifically defined shall have the following meanings:
  - A. "affiliate of a declarant" means any person who controls, is controlled by or is under common control with a declarant. For the purpose of this subsection:
  - B. "allocated interests" means the undivided interest in the common elements, the common expense liability and votes in the association allocated to each unit;
  - C. "association" or "unit owners' association" means the unit owners' association organized under Section 47-7C-1 NMSA 1978 of the Condominium Act;
  - D. "common elements" means all portions of a condominium other than the units;
  - E. "common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves;
  - F. "common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 47-7B-7 NMSA 1978 of the Condominium Act;
  - G. "condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;

H. "conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or persons who occupy with the consent of purchasers;

I. "declarant" means any person or group of persons acting in concert who:

- (1) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of;
- (2) reserves or succeeds to any special declarant right; or
- (3) executes and records a declaration;

J. "declaration" means any instruments, however denominated, that create a condominium, and any amendments to such instruments;

K. "development rights" means any right or combination of rights reserved by a declarant in the declaration to:

- (1) add real estate to a condominium;
- (2) create units, common elements or limited common elements within a condominium;
- (3) subdivide units or convert units into common elements; or
- (4) withdraw real estate from a condominium;

L. "executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;

M. "identifying number" means a symbol or address that identifies only one unit in a condominium;

N. "leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size;

O. "limited common element" means a portion of the common elements allocated by the declaration or by operation of Subsections B and D of Section 47-7B-2 NMSA 1978 of the Condominium Act for the exclusive use of one or more but fewer than all of the units;

P. "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal or commercial entity;

Q. "purchaser" means any person other than a declarant or a person in the business of selling real estate for his own account who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

- (1) a leasehold interest, including renewal options, of less than twenty years; or
- (2) as security for obligation;

R. "real estate" means any leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests which by custom, usage or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance, and includes parcels with or without upper or lower boundaries and spaces that may be filled with air or water;

S. "residential purposes" means use for dwelling or recreational purposes, or both;

T. "special declarant rights" means rights reserved for the benefit of a declarant to:

- (1) complete improvements indicated on plats and plans filed with the declaration;
- (2) exercise any development right;
- (3) maintain sales offices, management offices, signs advertising the condominium and models;
- (4) use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium;
- (5) make the condominium part of a larger condominium or a planned community;
- (6) make the condominium subject to a master association; or
- (7) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control;

U. "unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to the Act.

V. "unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

Any item not defined in the Declaration shall be as defined in the Condominium Act.

Exhibit 1. The legal survey, description of the property with list of the condominium units with their approximate square footage and their percentage of undivided interests in the common elements.

ARTICLE III  
BUILDINGS, CONDOMINIUMS, COMMON ELEMENTS AND  
FACILITIES AND EASEMENTS

1. **Description of Project.** The property consists of four separate and distinct buildings totaling 20 condos as follows:

Building 1 contains 2 condos, each a two story unit. The identifying numbers shall be Unit 101 and Unit 102

Building 2 contains 4 condos on the first floor and 4 condos on the second floor for a total of 8 units. The identifying numbers for the first floor units shall be Units 201, 202, 203 and 204. The identifying numbers for the second floor units shall be Units 205, 206, 207 and 208.

Building 3 contains 4 condos on the first floor and 4 condos on the second floor for a total of 8 units. The identifying numbers for the first floor units shall be Units 301, 302, 303 and 304. The identifying numbers for the second floor units shall be Units 305, 306, 307 and 308.

Building 4 contains 2 condos, each a two story unit. The identifying numbers shall be Unit 401 and Unit 402

2. **Description of Common Elements:** The common elements are all of the following (exclusive of the limited common elements) and are as shown on the attached Exhibit 1:

- a. The real estate and lands on which the building is located, all easements, servitudes, rights and privileges belonging to or pertaining to the property;
- b. Except for items defined as constituting the condominium units and their limited common elements, all other improvements not associated with a single unit;
- c. The grounds, driveways, parking areas, curbs, walks and walkways;
- d. The chattels used for the maintenance of the property;
- e. The utility meters and collection and distribution lines to the point they enter the condominium units, to the extent the meters and lines are not owned by a utility company, and to the extent the lines are not inside an individual unit;

f. All other parts of the property necessary for common use or convenient to its existence, maintenance and safety;

g. The roof surfaces of all the units;

h. The exterior stucco and painted surfaces of the units;

i. The landscaping and irrigation systems;

j. The easements benefiting the property.

3. **Limited Common Elements.** Limited common elements are set aside for the exclusive use and enjoyment of one or more but fewer than all of the units. Additionally, limited common elements shall consist of:

a. Any exterior facilities or awnings designed to serve a single unit located outside the units' boundaries;

b. Any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lying partially within and partially outside the designed boundaries of a unit but serving only a certain unit.

4. **Ownership of Condominium Units.** Each condominium owner shall own a condominium unit in fee simple absolute. Each condominium unit consists of the space shown on the attached Exhibit 1 together with all foundations, walls, floors, columns, girders, beams, ceilings, interior surfaces, and HVAC equipment plumbing and wiring and fixtures therein and appurtenant thereto, but does not include the land occupied by his condominium unit, the adjacent common elements or parking spaces. Each condominium owner possesses an exclusive perpetual easement to the portion of the land upon which his condominium unit, together with certain adjacent elements are located which are designed as limited common elements for the particular unit(s), as depicted on attached Exhibit 1, which is fully incorporated by reference.

No condominium owner shall by deed, plat, or otherwise, subdivide or in any other manner, cause a *condominium unit to be separated into any units, tracts or parcels smaller than the condominium unit.*

No condominium owner shall own any pipes, wires, conduit or public utility lines running through his condominium unit and serving more than his condominium unit or its limited common elements, except as tenant-in-common with all other condominium owners.

5. **Ownership Of Common Elements.** All the land described on Exhibit 1 above, is held in undivided common ownership by all the condominium owners. Subject to Declarant's development and ownership rights in relation to property depicted on Exhibit 1, each condominium owner shall own, an undivided interest in the common elements equal to each owners percentage of square footage and interest in the building.

The above-referenced square footage percentage shall be the allocated interest attributable to each unit's interest in the common elements, and common expense liability.

Each condominium owner shall own his undivided interest in the common elements as a tenant-in-common with all other condominium owners, and, except as otherwise limited in this Declaration, shall have the right to use the common elements for all reasonable purposes incident to the use his condominium unit only for the purposes set forth in this Declaration, which right shall be appurtenant to and shall run with each condominium unit.

The undivided interest of each condominium owner in the common elements shall remain constant. It may not be altered or changed without the unanimous consent and approval of the condominium owners, which consent and approval shall be expressed in an amended declaration.

6. **No Severance or Partition of Common Elements, Limited Common Elements or of Ownership Thereof.** The common elements, limited common elements, and the undivided interest of each owner of a condominium unit in the common elements, limited common elements shall not be partitioned, severed or separated from the condominium unit to which they are a part. No condominium owner shall execute any deed, lease, mortgage or other instrument affecting title to his condominium unit unless he includes therein both his title or interest in the condominium unit and his corresponding fraction or percentage interest or title in the common elements appurtenant thereto. Any such deed, lease, mortgage or other instrument purporting to affect the one without including also the other, shall be deemed and taken to convey, encumber or affect the title or interest so omitted, even though the interest is not expressly mentioned or described. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of any undivided interest in the common elements without the unit to which that interest is allocated is void.

7. **Easements.** The following easements and rights are hereby established, granted and dedicated:

a. Each condominium ownership shall have the following easements:

- (1) An exclusive, perpetual easement for the use of his condominium unit and its limited common elements subject to the rights of the other condominium unit owners as established by this Declaration;
- (2) An exclusive, perpetual easement to the portion of the limited common elements, as designated and described in the attached Exhibit 1 for use of the condominium unit;
- (3) A perpetual easement and right-of-way for his mutual benefit for the purpose of ingress and egress to and from the condominium unit and for the purposes of paving, provided however, vehicles may not be driven or pared on areas other than designated easements of parking areas, as set forth on Exhibit 1;
- (4) An easement across all common elements for pedestrian access and egress, subject to any

rules and regulations of the Association;

- (5) An easement over the surfaces of all common elements and limited common elements as may be reasonable necessary for maintenance of his condominium unit;
- (6) An easement across all condominium units, limited common elements and common elements for existing utility lines and for maintenance and replacement thereof;
- (7) A non-exclusive perpetual easement and right-of-way from the properly set forth on Exhibit 1 to the city street(s) providing access and utility easements to the condominium.
  - b. The Association and the board and its agents shall have a non-exclusive right and easement to have such access and make such use of the common elements, limited common elements and condominium units as may be necessary or appropriate for the performance of the Association's duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including but not limited to emergency repairs and maintenance, repair or construction of the common elements. Some of the common elements are located within or may be conveniently accessible only through a particular unit or limited common elements. If entry through a particular unit or limited common element is reasonably necessary by the Association for performance of the Association's duties or functions, the Association and its agents may enter a particular unit or limited common element for such purposes. Any such entry shall be made with as little inconvenience to the affected unit owner or occupants as practicable, and any damage caused thereby and/or damage to development rights, purchasers, mortgagees and other parties having an interest in the property, or any part or portion thereof. Any damage over \$100.00 will be paid by Association.

8. **Assessment and Ad Valorem Taxation.** The entire condominium, including the property, building and common elements shall be assessed as a single parcel for ad valorem taxes, under the name and address of the Association. The Association shall, from the maintenance fund, timely pay all ad valorem taxes and other assessments applicable to the property, and shall assess the unit owners for their respective share of ad valorem taxes and assessments. Each unit shall be responsible to pay the Association its share of ad valorem taxes and their assessments on the property on a timely basis, so as to avoid imposition of any fees, penalties or interest. Any offending unit owner who fails to timely pay such condominium units share of ad valorem taxes and/or assessments shall be liable to the Association for all fees, penalties and interest ultimately paid by the Association as a result of the failure of such unit owner to timely pay assessments for ad valorem taxes.

The Association may, with the affirmative vote of at least seventy-five percent (75%) of the votes of the Association, elect to assess each unit and its percentage of undivided interest in the common elements to be separate parcels to be separately subject to assessment and taxation for all ad valorem taxes and assessments, in which instance each unit owner shall properly assess his unit and its percentage of undivided interest in the common elements for taxation in such owner's name. In such event, the owners of the separate units shall be liable to pay all taxes, ad valorem assessments and special assessments of whatsoever nature relative to his particular unit.



9. **Maintenance of Condominium Units.** Except as otherwise set forth in Article IV, Section 2 of this Declaration, maintenance of the condominium units, including structural components, walls, glass, windows, door, plumbing, wiring, HVAC, near fences, storage yards and including patios and appliances and appurtenances solely serving the unit, is the responsibility of the individual condominium owners. Each condominium owner shall maintain his condominium unit in a first class condition, at the sole expense of that condominium owner. All repairs and replacement shall be substantially similar to the original construction and installation.

10. **Maintenance of Common Elements.** Maintenance of the common elements and access easement(s) shall be performed by the Association pursuant to the provisions of Articles IV and V. All repairs and replacements shall be substantially similar to the original construction and installation.

11. **Maintenance of Limited Common Elements.** Maintenance of the limited common elements shall be performed by the individual condominium owners. Portions of condominium units which are defined as limited common elements shall be maintained by the owners thereof.

12. **Damage Caused by Owner or Occupant.** Notwithstanding any duty of the Association established herein, any damage to the property or the common elements or limited common elements caused by negligence, abuse or misuse of any unit owner or occupant shall be the responsibility of the offending unit owner or occupant. If the Association incurs expenses to repair, maintain or remedy such condition, the Association shall be entitled to recover its costs and expenses thereby incurred from the offending unit owner or occupant and shall in addition be entitled to recover its costs, expenses and reasonable attorneys' fees thereby incurred. All such costs and expenses incurred by the Association shall be a lien on the unit of the offending owner or occupant.

#### ARTICLE IV ADMINISTRATION OF THE PROPERTY

1. Association of Condominium Owners and Board of Directors. The administration of the property shall be vested in a New Mexico non-profit corporation known as MOUNTAIN VIEW VILLAS CONDOMINIUM ASSOCIATION, INC. (Association), controlled by all the condominium owners as the sole members of said Association. The Association shall have all of the rights and powers set forth in the Act subject to any specific limitations contained in the Declaration. The Association shall act through a Board of Directors (hereinafter referred to as "Board"), in the manner set forth in the Association's Bylaws. Every person or entity who is a record owner of a fee or undivided fee interest in any unit shall be a member of the Association. If the owner is a corporation or other entity, the owner shall designate a single person who is to be a member of the Association. The Association shall elect 3 Persons to serve as members of the Board, provided however, that the Declarant or persons designated by Declarant may *exclusively appoint and remove the officers and the Board for a period to terminate no later than the earlier of:*

a. Four months after conveyance of Seventy-five (75%) of the maximum allowable number

of units; or

b. Two years after Declarant has ceased to offer units for sale in the ordinary course of Declarant business; or

c. Three years after the first unit is conveyed.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of that period, but in that event Declarant may require, for the duration of the period of Declarant's control, that special actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be appointed by the Declarant from among the unit owners. No member so appointed shall be an affiliate of the Declarant if such persons are available.

2. General Powers and Duties of the Board of Directors. The Board shall have the duty and such powers as shall be reasonably required to direct, administer, manage and protect the property in accordance with the provisions of this Declaration and said Bylaws; and, without limiting the foregoing, the Board shall have the duty and power to acquire and pay for, from the maintenance fund hereinafter provided for, the following:

a. Maintenance of roofs, exterior stucco and painted exterior surfaces of the condominium units and limited common elements and pointed exterior trim of the condominium units and limited common elements;

b. Maintenance of the common elements;

c. Sewer, water, waste removal, and necessary utility services for the common elements and sewer, water and waste removal for the condominium units;

d. Insurance as is provided for in this Declaration;

e. Repair and maintenance of easements, driveways and parking areas to accommodate automobiles for the owners, employees and invitees of the condominium units, including the Association's share of maintenance of common access easements;

f. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Board is required to secure or pay for, pursuant to the terms of these restrictions or by law or which, in its option, shall be necessary or proper for the benefit of all of the condominium owners and the administration, maintenance and operation of the property as first class condominium buildings or for the enforcement of these restrictions.

g. Any amount necessary to defend against or discharge any mechanics lien or other

encumbrance levied against the entire property or any part thereof which may in the opinion of the Board constitute a cloud or lien against the property or against the common elements, rather than merely against the interest therein of the undivided condominium ownership. Where one or more condominium owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board by reason of said lien or liens shall be specially assess to said condominium owners;

h. Landscaping, gardening, snow removal, painting, cleaning, maintenance, plastering, stuccoing, repair and replacement of the common elements, including garden and landscaping, walls (but not including the condominium units which the owner of the condominium units shall maintain and repair) and such furnishings and equipment for the common elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the common elements;

I. The services of any person or firm, including bookkeepers, accountants and attorneys, employed by the Board in furtherance of its general powers and duties hereinabove stated;

j. Any amount necessary to pay and discharge ad valorem taxes and governmental assessments against the condominium property, including penalties and interest;

k. Any assessments for maintenance of the common easement serving the property.

3. Discretionary Powers. Notwithstanding the foregoing, the Board shall have the power, but not the duty, to:

a. To establish common signposts and directories as the Board may determine to be reasonably necessary to direct the public to the occupants of the condominium units, and to adopt rules and regulations concerning signs within the property, and to charge occupants of the condominium units for the cost of purchasing and/or maintaining signs of a common design, color and scheme;

b. To hire employees or firms to maintain any of the common elements, and to hire employees or firms to water and to maintain landscaping, including landscaping within common and limited common elements;

c. To establish and dedicate easements across common elements and limited common elements as may be necessary for the benefit of the owners or the maintenance or improvement of the utility systems serving the property;

d. To construct improvements on the common elements for the mutual benefit of all the condominium owners and to charge access or use fees to owners for use thereof or for the right of use thereof;

e. To adopt a plan for the beautification, repair or maintenance of the stuccoed surfaces of units so as to provide a uniform coloration, paint or texture of stuccoed units;

- f. To enter into management contracts or agency contracts for the management of the Association and/or the maintenance of the common elements;
- g. To maintain and repair any condominium unit or the common elements thereof, if such maintenance or repair is necessary or desirable in the discretion of the Board, to protect the common elements or to preserve the esthetic nature of the condominium, the common facilities or any other portion of the buildings, and the condominium owner or owners of said condominium unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said owner or owners, of a condominium unit, provided that the Board shall levy a special assessment against such condominium owner and the unit for the special expense of said maintenance or repair of his condominium unit. The Board or its officers or agents may enter any condominium unit when necessary in connection with any maintenance, repair or construction of common elements accessible therefrom, and for making emergency repairs to prevent damage to the common elements or to another condominium unit for which the Board is responsible. Such entry shall be made with as little inconvenience to the condominium owners as practicable, and any damage caused thereby to the condominium unit shall be repaired by the Board at the expense of the maintenance fund. All such special expenses incurred relative thereto by the Association shall be a lien against the condominium unit for which such expenses are incurred, which lien may be foreclosed in the same manner as mechanics' and materialmen's liens are foreclosed under New Mexico law;
- h. To adopt such reasonable rules and regulations as it may deem advisable for the use, maintenance, conservation and beautification of the property, and the health, comfort, safety and general welfare of said condominium owners and occupants of said property. without limiting the generality of the foregoing, such rules and regulations may govern leases and renting of condominium units. Such rules and regulations shall not become effective until approved by a majority of the total votes of the Association;
- i. To enter into contracts for maintenance of all the condominium units or limited common elements. If substantially similar work is necessary for all the units and such work is approved by advance affirmative vote of at least Seventy-five percent (75%) of the total votes of the Association;
- j. To enter into management agreements for the performance of all or any part of the Association's duties and/or powers;
- k. To allocate commonly metered utility, refuse, garbage or sewer charges in an equitable manner, and to assess the unit owners therefor, and to administer such charges through the Maintenance fund, or to sub-meter any utilities and to charge unit owners for sub-metered consumption;
- l. To allocate assessments to the unit owners for ad valorem taxes and insurance taking into account any increased ad valorem taxes and insurance premiums which are increased by the

development, improvement or use of a particular condominium unit;

m. To do any other thing authorized by the Act or this Declaration.

4. **Limitation of the Powers of the Board of Directors:** The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the Maintenance fund any capital addition and/or improvement (other than for purposes of maintaining, replacing or restoring portions of the common elements, subject to all the provisions of this Declaration nor shall the Board authorize any structural alteration, capital additions to, or capital improvements for the common elements for which unit owners may be assessed the construction or acquisition cost, without in each case the prior approval of voting members holding at least Sixty-two percent (62%) of the total votes of the Association.

All vouchers for payments of expenditures by the Board shall be signed by such officer or officers, agent or agents of the Board and in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such vouchers shall be signed by the Treasurer and countersigned by the Chairman of the Board or the President.

#### ARTICLE V ASSESSMENTS FOR MAINTENANCE, TAXES AND INSURANCE

1. **Fire Insurance.** The Board shall acquire and pay for insurance against loss or damage to the condominium units and any structures or improvements which are common elements or limited common elements and are to be insured for physical damage as set forth in Article VIII, Section 2. The amount of such insurance shall not be less than One Hundred percent (100%) of the then current replacement value of the condominium units, which value shall be determined by agreement of the Board and the applicable insurance company engaged by the Board to provide fire and extended loss insurance coverage for the condominium units. The policy shall insofar as is possible, also insure the Board and the Association and the units' owners from liability for occurrences on or about the common and limited common elements.

2. **Creating of Maintenance Fund and Obligation for Assessments.** The Board shall establish a "maintenance fund" for the administration, maintenance, repair, replacement and improvement of the roofs and exterior surfaces of the condominium units and common elements of the property, for fire and extended loss, and premises and directors liability insurance, for maintenance of easements serving the property, for payment of ad valorem taxes, for the exercise and performance of its powers and duties, as hereinabove set forth, and for the benefit of all the condominium owners and the administration, maintenance and operation of the property as a first class condominium or for the enforcement of the restrictions set forth in the Declaration, which fund shall be financed or funded by assessments as hereinafter provided, paid by all condominium owners. The maintenance fund shall include estimated costs of all additional insurance required to be procured by the Board. The fund shall be administered on a fiscal year basis, which fiscal year shall end on December 31 of each year.

Each year, on or before October 31, the Board shall adopt a proposed budget for the condominium and shall estimate the total amount necessary (estimated cash requirements) to pay the cost of wages, materials, insurance, services and supplies which will be required for the administration, maintenance, repair, replacement and improvement of the common elements of the property during the coming fiscal year for the exercise and performance of the powers and duties of the Board, and for the benefit of all the condominium owners and the administration, maintenance shall be added on a pro-rata basis to the installments due over the succeeding year after rendering of the accounting.

The Board shall build up and maintain a reasonable reserve for contingencies and replacements, but these may be deemed to constitute loans from condominium owners, at the option of the Board, extraordinary expenditures not originally included in the annual estimate which may become necessary during the year, shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any condominium owner's assessment for casualty losses or unexpected expenses, the Board may at any time levy a further assessment, which shall be assessed the condominium owners. The Board shall serve notice of such further assessment on all condominium owners by a statement in writing, giving the amount and reasons therefor, and such further assessment shall be paid by the condominium owners within thirty (30) days of the date of mailing thereof.

When the first Board elected takes office, it shall determine the estimated cash requirement as hereinabove defined, for the period commencing thirty (30) days after such election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the condominium owners during said period as provided in this Article.

The failure or delay of the Board to prepare or serve the proposed budget or any accounting or assessment on any condominium owner shall not constitute a waiver or release in any manner of such condominium owners obligating to pay the maintenance assessments and necessary reserves, as herein provided, whenever the same shall be determined or incurred, and in the absence of any proposed budget or adjusted estimate, the condominium owners shall continue to pay the maintenance assessments at the then existing rate established for the previous period which is due not more than thirty (30) days after such new proposed budget or adjusted estimate shall have been mailed or delivered. The Board may retroactively establish or levy any assessment which could have otherwise been established or levied.

The Board shall keep full and correct detailed books of account and records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The records and vouchers authorizing the payment shall be available for inspection by any condominium owner or any representative of any condominium owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the owner. Upon Fifteen (15) days' notice to the Board and payment of a reasonable fee, any condominium owner shall be furnished a statement of his account, setting forth the amount of any unpaid assessments or other charges due and owing from such condominium owner.

All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied against less than all of the condominium owners, and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all the condominium owners equally.

If a condominium owner is in default in the payment of the aforesaid charges or assessments for sixty (60) days, the members of the Board may accelerate any other remaining installments or charges for the current year and bring suit for and on behalf of the Board and as representatives of all owners to enforce collection thereof or to foreclose the lien therefor as hereinafter provided; and there shall be added to the amount due the costs of said suit, together with interest and reasonable attorney's fees to be fixed by the court.

To the extent permitted by the Act as from time to time amended, and by any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, collection costs and attorneys' fees shall be and become a lien or charge against the condominium ownership of the condominium owner involved when payable and may be foreclosed by an action brought in the name of the Board as in the case of foreclosure of liens against real estate. Said lien shall take effect and be in force at the time the assessment becomes due. No recordation of the claim of lien shall be required. Interest shall accrue from the assessment due date at the rate of 1.5% per month from the initial due date.

5. Liens/Statement of Account. Any lien for delinquent common expense assessments or other charges that the Association has on a unit will be subordinate to a first mortgage on the unit if the mortgage was recorded before the delinquent assessment was due. Any encumbrancer, prospective buyer or owner may from time to time and upon payment of a reasonable fee request in writing a statement from the Board setting forth the unpaid common expenses and assessments with respect to a condominium unit. Unless the request shall be complied with within Fifteen (15) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of an encumbrancer. Any bonafide buyer of a unit not receiving notification of the unpaid expenses and/or assessments shall not be liable to pay such items, but in no event shall the selling owner be relieved of such items. Otherwise, in the event of a voluntary sale of a condominium ownership, the grantor and grantee shall be jointly and severally liable for all unpaid common expenses and assessments for common expenses related to said condominium ownership to the time of such grant or conveyance. A lien for assessments is not affected by the sale or transfer of the unit estate unless a foreclosure of a first mortgage is involved. The foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any prior or subsequent unit owner from paying further assessments.

6. Due Dates of Assessments. Unless otherwise specified by the Board, maintenance assessments shall be due monthly on the fifth day of each month, without notice or demand. The Association may set other due dates for payment of assessments, so long as the due dates are not in contravention of the Act.

7. Assessments Based on Special Circumstances. Generally, each unit shall be subject to Assessments in the percentage of each unit's undivided interest in the condominium and in the common elements. However, in the instances that a particular unit contains improvements so as to disproportionately increase the value of the building for ad valorem tax purposes or conducts activities on or within the unit which disproportionately increases the rate of any insurance policies, the cost of water or refuse service or maintenance of the common elements, then the owner of the unit(s) disproportionately affecting such costs, ad valorem taxes, insurance rates or maintenance of the common elements shall be liable to pay, through increased assessments, such increases.

ARTICLE VI  
COVENANTS AND RESTRICTIONS AS TO-USE AND OCCUPANCY

1. Restriction on Use. The condominium units and common elements shall be used and occupied as follows:

a. Each condominium unit and its limited common elements and facilities shall be used and occupied only for residential use. All activities on the premises must comply with all applicable zoning ordinances, laws and regulations.

b. No maintenance, changes, modification or addition to the exterior of any condominium unit, including by way of example and not limitation, painting of exterior trim or surfaces, building of new fences or walls restuccoing or addition of fixtures, shall be allowed except with advance written permission of the Board and except if such action complies with the provisions of the Declaration;

c. There shall be no obstruction of the common elements and facilities except as expressly provided herein. The common elements and limited common elements and facilities shall be kept free and clear of rubbish, debris, stored materials, junked or stored vehicles, and other unsightly materials. No inoperative vehicles or large unsightly equipment shall be allowed to be parked on the common or limited common elements and facilities longer than a 72 hour period. Nothing shall be altered, constructed or removed from the common elements and facilities or *limited common elements and facilities except upon the prior written consent of the Board*. No waste shall be committed on the common elements and facilities.

d. There are 48 automobile parking spaces located on the property

e. Nothing shall be done or kept in any condominium unit or in the common elements which will increase the rate of insurance of the condominiums, without the prior written consent of the Board. No condominium owner shall permit anything to be done or kept in his condominium unit or in the common elements which will result in the cancellation of insurance of the buildings, or contents thereof, or which would be in violation of any law;

f. There will not be allowed in or on any condominium unit, limited common elements or common elements any garbage, garbage receptacles, garbage bag or trash cans, except for those provided by the Association. The common areas shall be kept free and clear of rubbish, debris



and all other unsightly materials;

g. Condominium owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of any condominium unit, without the prior consent of the Board, provided, however, that the two street level units will be permitted to have signs. Window coverings or curtains, blinds or shades which are visible to outside views shall be aesthetically harmonious with the exterior design color and other units, as determined by the Board.

h. No pet or animal shall be allowed to roam unattended onto the common elements or into other units or onto the limited common elements of other units. No veterinary services shall be performed within any unit. No guard dogs shall be kept or allowed within any unit. The use of assistance dogs is permitted, subject to the same restrictions as are otherwise contained in this Article.

I. No noxious or offensive activity shall be carried on in any condominium unit or in the common elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to a condominium owner or occupant. Without limitation, the following items shall be considered noxious, offensive, annoying or dangerous: offensive or strong odors, continuous, repeated, loud or annoying sounds or music, discharge of firearms, accumulations of trash, religious decorations and bright outdoor lights directed toward neighboring condominium units, long-term parking of vehicles, violation of restrictions as to use and occupancy as are set forth in this Article, and any other conduct, activity or use which would otherwise meet the definition of a "general nuisance" or "public nuisance" under common law or applicable governmental zoning and ordinances, laws and regulations;

j. No plastic, tarpaulins, rugs, clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on or exposed outside a condominium unit or upon the limited common elements or common elements;

k. No advertisements or "occupancy" or "For sale" or "For rent" or other signs or other window displays or political or commercial advertisements shall be maintained or permitted on any part of the property or on or in any condominium unit or on the limited common elements or common elements, except as permitted in paragraph below;

l. All signs identifying the occupant of a condominium unit shall be of a common size, color and scheme as adopted by the Association and shall be subject to the Association's rules and regulations. Any condominium owner wishing to sell its unit or a single agent representing such owner may place a "For sale" sign no larger than 20" x 36" in front of the unit offered for sale. Notwithstanding the foregoing, Declarant may place and maintain a "For sale" or "For rent" sign on any unsold or unoccupied condominium unit and at the entrance to the property; *and Declarant may hold unlimited open house showings of any unsold or unoccupied condominium unit;*

m. Nothing shall be done in any condominium unit or in, on or to the common elements,

limited common elements which will impair the structural integrity of the buildings, which will jeopardize the soundness of the same and the safety thereof, which would structurally change the buildings, except as in otherwise provided herein, or which would reduce the value of or impair easements, servitude, rights, privileges or hereditaments belonging to or in any way appertaining to the property. Each condominium owner shall be obligated to maintain and keep his unit in good order and repair. It shall be the responsibility of each condominium owner to maintain in good condition his own condominium unit and limited common elements adjacent to his unit which are reserved for his exclusive use, unless otherwise provided for by the Board;

n. Except in conjunction with exercise of development rights or the Board's duties, nothing shall be altered or constructed or removed, including parking signs, striping, trees and shrubs, for the common elements, except upon written consent of the Board. No waste will be permitted in the common elements. Condominium owners may not plant, remove, cut or prune trees and shrubs located in the common areas or their limited common elements except upon written consent of the Board, provided, however, condominium owners may plant flowers, low shrubs and otherwise carry on gardening activities upon their limited common elements;

o. No expansion of, or addition to a condominium unit shall be allowed;

p. All trim and exterior painted surfaces shall be uniform in color and style;

q. No condominium unit shall be used to store explosive devices, materials or other dangerous instrumentalities, firearms and ammunition for personal use are excluded from this provision;

r. No owner or occupant of any condominium unit shall dispose of any waste in a manner which will corrode, clog or otherwise impair sewer service for the development;

2. Board Not Liable For Damages. The Association, the Board and its members shall not be liable in damages to anyone submitting any plans for approval or to any owner or lessee of any condominium unit subject to these protective covenants by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with respect to any action or plans submitted to it. Anyone acquiring title to or leasehold interest in any condominium site, or submitting plans to the Board for approval, by so doing agrees and covenants that he or she will not bring an action or suit for damages against the Board, its members as individuals, or its advisers, employees or agents.

3. Title Insurance. It is contemplated that title insurance will be secured in connection with the transfer and re-transfer or mortgaging of the condominiums subject to these protective covenants and restrictions. Any title insurance company issuing title insurance on the condominiums and all subsequent transferees or successors in title thereto may rely conclusively on a statement executed by the Board to the effect that any given improvement or usage has been duly approved and is duly approved by the Board and the Association.

4. Declarant's Rights. Notwithstanding the foregoing until Declarant has fully exercised all its development rights, the Declarant shall have the right to utilize the common elements for constructions purposes, and may store and utilize equipment and materials thereon. Declarant may, during exercise of Declarant's development rights, perform any act reasonably necessary or proper relative to performance of Declarant rights or obligations, without exception. Declarant shall further have the right to execute and file all documents which may be necessary or proper to effectuate sale of Declarant's development rights or newly constructed units.

ARTICLE VII  
LEASE

1. Lease. A condominium unit may be leased or subleased in whole or part or rented by its owner, including Declarant. All leases shall be written. Any condominium owner may lease the whole of his condominium unit to another person or persons, subject to the provisions of this Declaration and rules, regulations and supervisory powers of the Board.

2. Rules and Regulations. The Board may adopt rules and regulations governing the lease and use of condominium units. The rules and regulations adopted by the Board may usurp, prohibit or prevent preexisting conduct, even if such conduct was not prohibited by the Declaration or existing rules or regulations prior to the adoption of the new rules and regulations.

ARTICLE VIII  
INSURANCE

1. Authority to Purchase.

a. Insofar as is practical, all insurance policies relating to the property shall be purchased by the Board on behalf of itself, the Association or the unit owners. The Board and the unit owners may be also named as additional insureds. Neither the Board nor the managing agent nor the Declarant shall be liable for failure to obtain any coverages 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. To the extent reasonably available and practical, 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, the unit owners and their respective agents and employees;

(2) 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, acting within the scope of his authority for the Association, officer or employee of the Board or the managing agent without a prior demand in writing that the Board or the managing agent cure the defect and neither shall have to cured such defect within Thirty (30) days after such demand;

(3) Such policy may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Board and, in the case of physical damage insurance, to all mortgagees;

c. All policies of insurance shall be written by reputable companies licensed to do business in the State of New Mexico, insofar as is practical. Physical damage policies shall be in a form and substance acceptable to the Mortgagees.

## 2. Physical Damage Insurance.

a. The Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, insuring the entire Property (including all of the units), but not including contents, equipment, furniture, wall coverings, furnishings or other personal property supplied or installed by unit owners, together with all air conditioning and heating equipment and other service machinery contained therein, and covering the interest of the unit owners, the Association, the Board and all unit owners' mortgages, as their interest may appear, subject, however, to the loss payment and adjustment provisions in favor of the Board and the insurance trustee contained in Sections 7 and 8 of this Article VIII, 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 with the assistance of the insurance company affording such coverage).

b. To the extent reasonably available and practical, 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): "no control"; "contingent liability from operation of building laws or codes"; "increased cost of construction"; or condominium replacement cost"; and "agreed amount" or elimination of co-insurance clause;

(3) That any "no insurance" or more commonly referred to as "other issuances" clause expressly exclude individual unit owners' policies from its operation so that the physical damage policy purchased by the Board shall be deemed primary coverage and any individual unit owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board hereunder provide for or be brought into contribution with insurance purchased by individual unit owners or to their mortgagees unless otherwise required by law; and

(4) For comprehensive general liability insurance for the premises of the condominium units, common elements and limited common elements with limits and coverage per Section 3 of this

Article.

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 shall obtain an appraisal from an insurance company, or such other source as the Board may determine, or the current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excused from such coverage), without deduction for depreciate, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 2. All mortgagees shall be notified promptly of any event giving rise to a claim under such policy.

3. **Liability Insurance.** To the extent reasonably available and practical, and is not available through the Board's purchase of physical damage (fire) coverage, the Board 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 may from time to time determine, insuring each member of the Board, 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, if practical:

- a. 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;
- b. Non-owned vehicle coverage;
- c. host liquor liability coverage with respect to events sponsored by the Association;
- d. Deletion of the normal products exclusion with respect to events sponsored by the Association; and
- e. A severability of interests endorsement which shall preclude the insurer from denying liability to a unit owner because of negligent acts of the unit owner, Association or of another unit owner.

The Board 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 from bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

4. **Fidelity Bond.** To the extent reasonably available and practical, the Board shall obtain and maintain fidelity bonds or dishonest employee coverage insuring the Board against loss by any members of the Association, directors or other agents of the Association who may handle the

Association's book, banking accounts or collections.

5. Other Insurance. The Board shall obtain and maintain:

a. If required by any governmental or quasi-governmental agency or tender holding a mortgage on any condominium, 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;

b. Worker's compensation insurance if and to the extent necessary to meet the requirements of law;

c. Such other insurance as the Board may determine advisable or as may be requested from time to time by a majority of the votes of the unit owners.

6. 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 contents and personal property and for his personal, professional and premises liability as well as upon any improvements made by him to his unit normally called "tenant 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, on behalf of all unit owners, may realize under any insurance policy maintained by the Board to be brought into contribution with insurance coverage obtained by a unit owner. All such policies shall contain waivers of subrogation against the Board and Association.

7. Insurance Trustee.

a. All physical damage insurance policies purchased by the Board shall be for the benefit of the Association, the unit owners, their mortgagees and the Declarant, as their interests may appear, and shall provide that, with respect to any single loss, if the proceeds thereof exceed Fifty Thousand Dollars (\$50,000.00) then all such proceeds shall be paid in trust to such lending institution in the metropolitan Albuquerque area with trustee powers as may be designated by the Board (which trustee is herein referred to as the insurance trustee). If an Albuquerque lending institution is not willing to serve as the insurance trustee, the Board may appoint an individual or corporate insurance trustee. If such proceeds do not exceed Fifty Thousand Dollars (\$50,000.00) then all such proceeds shall be paid to the Board to be applied pursuant to the terms of Article VIII.

b. The Board shall enter into an insurance trust agreement with the insurance trustee which shall provide that the insurance trustee shall not be liable for payment of premiums, the renewal of the policies, the sufficiency of coverage, the form or contents of the policies, the correctness of any amounts received on account of the proceeds of any insurance policies nor for the failure to collect any insurance proceeds. The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in this Declaration, for the benefit of the insureds and their beneficiaries thereunder.

8. Board as Agents. The Board 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 and to execute and deliver releases upon the payment of claims. Each unit owner appoints the Board as an attorney-in-fact for this purpose. The Board, in its discretion, and under terms and conditions which may be imposed by the Board, may relinquish its rights hereunder in favor of any owner, if the Board determines it is appropriate to allow the owner to negotiate with the insurer and to repair any casualty without involvement of the Board.

#### ARTICLE IX DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. When Repair and Reconstruction are Required. Except as otherwise provided in Section 4 of this Article, in the event of damage to or destruction of all or any of the building as a result of fire or other casualty, the Board (under the direction of the insurance trustee) shall arrange for and supervise the prompt repair and restoration of the damaged Improvements, including any damaged units, and the floor coverings, HVAC equipment and appliances initially installed therein by the Declarant, and replacement thereof installed by the unit owner, but no 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.

2. Procedure for Reconstruction and Repair.

a. Cost Estimates. Immediately after a fire or other casualty causing damage to the building, the Board (under the direction of the insurance trustee) 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 replacement thereof, but not including any other furniture, furnishings, fixtures or equipment installed by the unit owner in the units to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bond as (the insurance trustee) (the Board) 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 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 cause and a special maintenance fund assessment therefor shall be levied against all units.

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

d. Insurance Company or Unit Owner Performing Reconstruction and Repair. The Board may, in its discretion, allow the insurer of the damaged improvements or the affected unit owner to contract for reconstruction and repair of all insured improvements. The Board may impose such requirements as the Board determines in its discretion.

3. Disbursement of Construction Funds.

a. Construction Funds and Disbursements. The proceeds of insurance collected on account of casualty, and sums received by the Board (or insurance trustee) 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 in the following manner:

(1) If the estimated cost of reconstruction and repair is less the Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board.

(2) If the estimated costs of reconstruction and repair is Fifty Thousand Dollars (\$50,000.00) or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect or construction manager qualified to practice in New Mexico and employed by the insurance trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work and stating that: The sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; there is no other outstanding indebtedness known to such architect for the services and materials described; and the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

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 unit owners in proportion to the common expense liability 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 other common elements and thereafter to the cost of repairing the units.

d. Certificates. The insurance trustee or Board, as applicable, shall be entitled to rely upon a certificate executed by the president or vice president, and the secretary, certifying: Whether the damaged property is required to be reconstructed and repaired; the name of the



payee and the amount to be paid with respect to disbursement from any construction fund or whether surplus to be distributed are less than the assessments paid by the unit owners; and all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the insurance trustee or Board as applicable promptly after the request.

4. When Reconstruction is not Required. In the event of insubstantial damage to the common elements and if the Board 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 in proportion to their respective percentage ownership interest in common elements. If the condominium shall be terminated, the net assets of the condominium together with the net proceeds of insurance policies, if any, shall be divided by the Board or the insurance trustee, as the case may be, among all unit owners 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.

5. Waiver. The Board may, in its discretion, allow the unit owner to contract for repair of all damaged improvements. The Board and the owners of the damaged unit may waive the provisions of Articles VIII and IX and enter into a mutually satisfactory agreement for the disposition of insurance proceeds and/or the repair or renovation of any unit.

**ARTICLE X**  
**SALE OR CONDEMNATION OF THE PROPERTY**

1. Damage or Destruction. In the event all of the building and improvements on the property are damaged or destroyed, the condominium owners, by affirmative vote of at least seventy five percent (75%) of the total votes of the Association cast at a meeting of the Association duly called for such purpose, may elect to sell the property as a whole. In connection with an action approving such a sale, the Association shall determine an equitable division of sale proceeds based upon the fair market value of each of the condominium units. Such determination shall be binding upon all condominium owners, and it shall thereupon become the duty of every condominium owner to execute and deliver such instruments and to perform all acts as in manner and form as may be necessary to effect such sale; provided, however, that any condominium owner who did not vote in favor of such action and who has filed written objections thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair market appraisal, less the amount of any unpaid assessments or charges due and owing from such condominium owner. In the absence of agreement on an appraiser, such unit owner and the Board may each select an appraiser, and the two so selected shall select a third, and the fair market value, as determined by a majority of the three so selected, shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The remainder of net proceeds of sale, minus the amount paid to any objecting owner(s) shall be divided among the other owners in proportion to their interests as set forth in the proportional division of

proceeds previously approved by the Association. Each unit owner appoints the Board as the owners' agent and attorney-in-fact for the purpose of selling the property as a whole, once the Association has voted to sell the property as a whole.

2. Condemnation. If any condemnation proceeding involves solely the taking of all or part of a condominium unit, and does not involve taking of all or part of the common elements or limited common elements, then the condominium owner(s) whose units are being taken shall have the sole right to the proceeds of condemnation payable for the taking of such unit. If the condemnation involves the taking of all or part of any common elements or limited common elements, the Association, through the Board, shall be solely empowered to negotiate, litigate and/or settle any such condemnation. Each unit owner appoints the Board as the owners' agent and attorney-in-fact for all purposes concerning condemnation of common elements and/or limited common elements. The Association shall determine an equitable division of condemnation proceeds and such determination shall be binding upon all condominium owners.

ARTICLE XI  
REMEDIES FOR BREACH OF DECLARATION-  
COVENANTS, RESTRICTIONS AND REGULATIONS

1. Abatement and Enjoyment. If any condominium owner (either by his own conduct or by the conduct of any other occupant of his condominium unit) or other party shall substantially violate any of the covenants or restrictions or provisions of this Declaration or the rules and/or regulations adopted by the Board, and such violation shall continue thirty (30) days after the meeting of notice in writing from the Board of such violation, or shall occur repeatedly after written notice or requires to cure such violation from the Board, then the Association shall have the power to exercise a right of summary abatement (self-help) or to sue the defaulting condominium owner or other party in any court of jurisdiction and to obtain injunctive relief and/or actual damages against the defaulting condominium owner or occupant. The Association may obtain injunctive relief to compel the removal of any offending tenant, owner, occupant or pets or animals. Any unit owner shall have the right to enforce any of the covenants, restrictions or provisions of this Declaration and shall be entitled to obtain injunctive relief and/or actual damages against the defaulting condominium owner or occupant. No bond or security shall be required of the Board, Association or any owner as a requirement for obtaining injunctive relief. If the Association utilizes summary abatement or similar means to enforce restrictions, the Association and those acting as agents or upon authority of the Association shall not be liable for damages to any offended unit owner, occupant or other person or entity, so long as the summary abatement has been approved by resolution of the Board. No structural aspects of the condominium or items of construction may be altered or demolished through any summary abatement.

2. Lien Foreclosure. The Association shall have the power to sue to foreclose its lien for unpaid assessments in the same manner provided by New Mexico law for foreclosure of materialmen's and mechanics liens. Any defaulting owner shall be liable to pay all costs, expenses and attorney's fees incurred by the Board or Association in successful enforcement of a lien for unpaid assessments or for successful collection of unpaid assessments.

ARTICLE XII  
RESTRICTIONS TO PROTECT LENDERS

1. Mortgagee's Consent. Except for Declarant exercise of development rights, unless at least sixty-two point 5 percent (62.5%) of all mortgagees/lenders holding first mortgages encumbering condominium unites shall have given their prior written approval, so material amendments to this Declaration shall be allowed. Material amendments are amendments which change or modify the Declaration with respect to the following:
  - a. Voting rights;
  - b. Assessments, assessment liens or the priority of assessment liens;
  - c. Reserves for maintenance, repair and replacement of common areas;
  - d. Responsibility for maintenance and repairs;
  - e. Reallocation of interests in the general or limited common areas, or rights to their use;
  - f. Redefinition of any unit boundaries;
  - g. Convertibility of units into common areas or vice versa;
  - h. Expansion or contraction of the project, or the addition, annexation or withdrawal of property to or from the project;
  - I. Insurance;
  - j. Leasing of units;
  - k. Imposition of any restrictions on a unit owner's right to sell or transfer his unit;
  - l. A decision by the owners' association to establish self management when professional management had been required previously by the project documents or by an eligible mortgage holder;
  - m. Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than the specified in the documents;
  - n. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or
  - o. Any provisions that expressly benefit mortgage holder, insurers, or guarantors.
2. Notice. Any holder, insurer or guarantor of a mortgage on any unit shall have the right to

timely written notice of:

- a. Any condemnation or casualty loss that effects either a material portion of the property or the unit securing its mortgage;
- b. Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage;
- c. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- d. Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

To be entitled to receive the above notice, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number and address of the unit on which it has (or insurers or guarantees) the mortgage. The Association may impose a reasonable charge for providing such information. The charge may be made to the unit owner and/or the mortgage holder, insurer or guarantor requesting the information.

### ARTICLE XIII IMPLIED CONSENT OF MORTGAGEE

Any action requiring approval of mortgagees shall be deemed approved by a mortgagee if the mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal, provided the notice was delivered by certified or registered mail to the mortgagee's last known address to the attention, with a "return receipt" requested.

### ARTICLE XIV GENERAL PROVISIONS

The following general provisions shall govern the administration and management of the property:

1. Members of the Association will be allocated votes in direct proportion to their allocated interest as defined in Article III, Paragraph 5. All motions or propositions presented for vote before the Association must pass with 62.5% of the allocated votes. The only exception to members voting their allocated votes is that in the selection of officers for the Association each unit shall cast one vote by secret ballot. Every person or entity who is a record owner of a fee or undivided fee interest in any unit which is within the boundaries of the property described on Exhibit I of the Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member;
2. Notices required to be given to the Board or the Association may be delivered to any

member of the Board or officer of the Association, either personally or by mail addressed to such member or officer at his condominium unit;

3. Notices required to be given any devisee or personal representative of a deceased condominium owner may be delivered either personally or by mail to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased condominium owner is being administered;

4. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur;

5. The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or any part of the same, shall not impact or affect in any manner the validity, enforceability or effect of the rest of this Declaration. In the event of a conflict between the provisions of the Declaration and the provisions of the Act, the conflict shall be resolved in favor of the Act.

6. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium project development;

7. Unit such time as Declarant has sold and conveyed at least ten condominium units, Declarant shall have the right to amend this Declaration or any addendums hereto. However, no such amendment shall: Allow the sale of more than twenty condominium units on the property; substantially deviate from the condominium regime as set forth in the previously filed Declaration and/or of the disclosure, statements given to owners of previously conveyed units; in any way withdraw, contradict or impair any development right previously transferred to any party; or materially amend the Declaration in contravention of this Declaration's restrictions to protect lenders. Otherwise, the Declaration may be amended by the condominium owners by affirmative vote of at least Sixty-two percent (62%) of the votes of the Association, cast at a meeting of the Association duly called for such purpose;

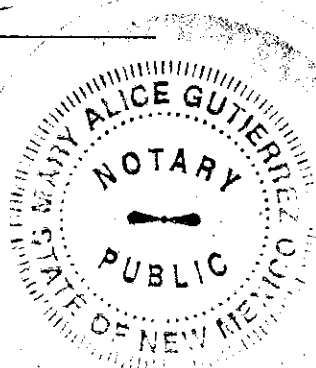
8. Any action requiring Declarant's approval may be approved by any agent of Declarant so designated in writing by Declarant.

IN WITNESS WHEREOF, we have hereunto set our hands to this 29 page document this 29 day of January, 2020.

DECLARANT.

*[Handwritten signatures]*

Acknowledged this date Jan. 29, 2020 by Warren Callant



Date 1.29.2020  
1.29.2020

NOTARY  
Mary Alice Gutierrez  
Expiration  
Jan. 15, 2022