



Mulberry Gardens Courtyard Condominium Association, Inc.

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- Forms

Articles of Incorporation

Mulberry Gardens Courtyard
Condominium Association, Inc.



OFFICE OF THE
PUBLIC REGULATION COMMISSION

CERTIFICATE OF INCORPORATION

OF

MULBERRY GARDENS COURTYARD CONDOMINIUM ASSOCIATION, INC.

2623874

The Public Regulation Commission certifies that the Articles of Incorporation, duly signed and verified pursuant to the provisions of the

NONPROFIT CORPORATION ACT

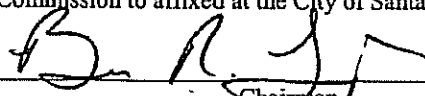

(53-8-1 to 53-8-99 NMSA 1978)

have been received by it & are found to conform to law.

Accordingly, by virtue of the authority vested in it by law, the Public Regulation Commission issues this Certificate of Incorporation & attaches hereto, a duplicate of the Articles of Incorporation.

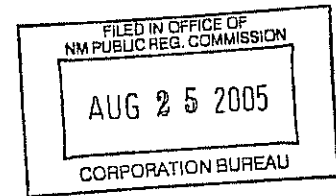
Dated: AUGUST 25, 2005

In testimony whereof, the Public Regulation of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to affixed at the City of Santa Fe.


Chairman

Bureau Chief

2623674

**ARTICLES OF INCORPORATION
OF MULBERRY GARDENS COURTYARD
CONDOMINIUM ASSOCIATION, INC.**



THE UNDERSIGNED has prepared and hereby adopts the following Articles of Incorporation:

ARTICLE I

The name of the Corporation shall be MULBERRY GARDENS COURTYARD CONDOMINIUM ASSOCIATION, INC. (the "Corporation").

ARTICLE II
Purposes

The Corporation shall not afford, directly or indirectly, pecuniary gain or profit to its members. The purposes of the Corporation are:

A. To operate exclusively for the benefit of the owners of condominium Units within the Mulberry Gardens Courtyard Condominium (hereinafter called the "Condominium") located on the following property in Bernalillo County, New Mexico:

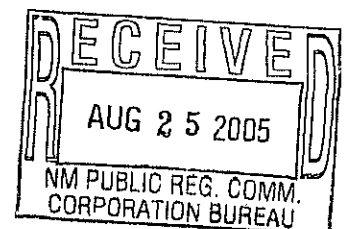
Lot numbered F-1 (F-1) in Block numbered One (1) of the COUNTRY CLUB ADDITION to the City of Albuquerque, New Mexico as the same is shown and designated on the replat of Lots D, E, F, J. 32 and the South 10 feet of Lot N in Block 1 of the Country Club Addition filed in the office of the County Clerk of Bernalillo County, New Mexico on June 20, 2002.

B. To enforce the provisions of and perform the duties of the "Association" set forth in the Declaration relating to the Condominium (hereinafter the "Declaration"), to be filed for record in the Records of Bernalillo County, New Mexico, as it may be amended, the provisions of which are incorporated herein by this reference; and

C. To manage certain property within the Condominium (hereinafter called the "Common Elements") for the benefit of the owners and residents of the Units situate within the Condominium, as more specifically provided in the Declaration.

ARTICLE III
Powers

The Corporation shall have the following powers:



A. To perform any and all acts necessary and proper to promote the health, safety and welfare of the owners and residents of Units situate within the Condominium, including without limitation, any of the following acts:

- (1) To establish and collect regular and special assessments or charges to be levied against the members of the Corporation and their Units located within the Condominium as provided in the Declaration;
- (2) To enforce any and all covenants, conditions and restrictions as set forth in the Declaration, including any amendments thereto;
- (3) To place and maintain landscaping located within the Common Elements;
- (4) To pay taxes, if any, assessed against the Common Elements and to discharge any liens or claims of lien against the Common Elements;
- (5) To receive, administer and apply funds generated by regular and special assessments for the common benefit of the owners and residents of Units located within the Condominium.

B. To perform all acts and exercise all powers authorized by the Non-Profit Corporation Act, Sections 53-8-1 through 53-8-99, N.M.S.A. 1978, as now or hereafter amended, and to perform all acts and exercise all powers which a non-profit corporation is authorized to do in the manner authorized under all applicable statutes of New Mexico, including, without limitation, the "Condominium Act", Sections 47-7A-1 through 47-7D-20, N.M.S.A. 1978, as now or hereafter amended, and including without limitation, the following:

- (1) To receive and administer funds and contributions received by gift, deed, bequest or devise and to hold, invest, expend, contribute or otherwise dispose of such funds and contributions for the purposes for which this Corporation is organized;
- (2) To borrow money and make, execute or issue bonds, debentures, promissory notes or other corporate obligations for money borrowed, or in payment for property acquired, and to secure the payment of any such corporate obligations by pledge, mortgage, indenture, agreement or otherwise, provided, however, that the conveyance or encumbrance of

Common Elements shall require approval as set forth in the Condominium Act;

(3) To lend money, make loans and engage in financing arrangements of all types for the purposes for which this Corporation is organized;

(4) To acquire by purchase or otherwise personal property of every kind whatsoever and to hold, invest and reinvest same for the purposes for which the Corporation is organized;

(5) To acquire by purchase or otherwise real property and to hold, use, improve, lease, rent, sell, convey or encumber same for the purposes for which this Corporation is organized, provided, however, that the conveyance or encumbrance of Common Elements shall require approval as set forth in the Condominium Act;

(6) To enter into, make, perform and carry out contracts, agreements, commitments and assurances of every kind for the purposes for which this Corporation is organized;

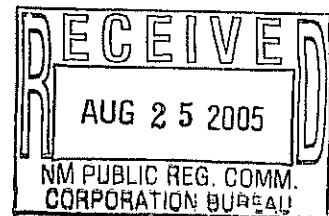
(7) In doing, exercising or performing any of the foregoing, to do the same as a contractor, subcontractor, principal, agent, employee or on its own behalf, or in association, partnership, corporation or joint venture with any person, partnership, corporation, joint venture or other business entity.

C. To exercise all powers which the Corporation is authorized to exercise pursuant to these Articles of Incorporation primarily for the purposes of acquisition, construction, management, maintenance and care of Common Elements consistent with the provisions of Section 528 of the Internal Revenue Code of 1954, as now or hereafter amended.

D. The Corporation shall neither have nor exercise any power, nor shall it directly or indirectly engage in any activity which would result in its net earnings inuring to the benefit of any private person. Upon dissolution of the Corporation, the assets, both real and personal, of the Corporation shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those which they were required to be devoted by the Corporation.

ARTICLE IV **Duration**

The period of duration of the Corporation shall be perpetual.



ARTICLE V
Registered Agent and Office

The registered agent of the Corporation is John A. Myers and the address of the registered office of the Corporation is 1401 Central NW, Albuquerque, New Mexico 87104.

ARTICLE VI
Board of Directors

The management of the affairs of the Corporation shall be vested in a Board of Directors known as the "Executive Board." The number, qualifications, nomination, election and terms of office of the members of the Executive Board shall be as set forth in the Bylaws of the Corporation. The initial Executive Board shall consist of the three (3) persons whose names and addresses appear below:

Sean Gilligan
811 Marquette NW
Albuquerque, NM 87102

Susan Welker
1912 Tierra Vida Place
Albuquerque, New Mexico 87107

Marilyn Keller
811 Marquette NW
Albuquerque, New Mexico 87102

ARTICLE VII
Name and Address of Incorporator

The name and address of the Incorporator is as follows:

John A. Myers
Myers, Oliver & Price, P.C.
1401 Central Ave NW
Albuquerque, New Mexico 87104

ARTICLE VIII
Membership

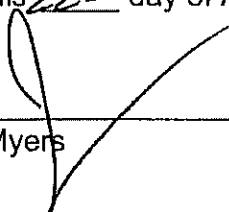
A. Membership. Every person or entity who is the beneficial owner of a fee simple interest in any Unit subject to the Declaration shall be a member of the Corporation; provided that any person or entity holding such interest as security for the payment of a debt or performance of any obligation shall not be a member; and further provided that any

person or entity acquiring such interest at a judicial sale or by conveyance in lieu of foreclosure shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to the Declaration.

ARTICLE IX
Amendment

Subject to the provisions of the Declaration, these Articles of Incorporation may be amended, changed, modified or repealed in the manner now or hereafter provided by law upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the members entitled to vote in person or by proxy at a meeting duly called for that purpose, notice of which is given to members as provided in the Bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned Incorporator of this Corporation has made and signed these Articles of Incorporation this 22nd day of August, 2005.



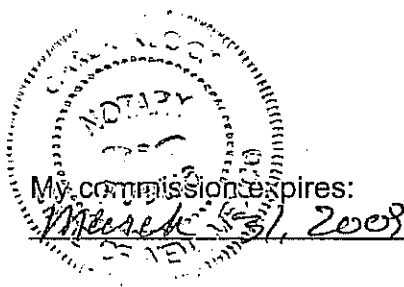
John A. Myers

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

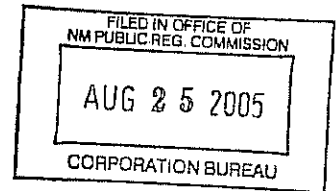
The foregoing instrument was duly acknowledged before me this 22nd day of August, 2005, by John A. Myers.



Notary Public



**AFFIDAVIT OF ACCEPTANCE OF APPOINTMENT
BY DESIGNATED INITIAL REGISTERED AGENT**



To: The Public Regulation Commission
State of New Mexico

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

On this 22nd day of August, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared JOHN A. MYERS, who is to me known to be the person and who, being by me duly sworn, acknowledged to me that he does hereby accept his appointment as the initial Registered Agent of Mulberry Gardens Courtyard Condominium Association, Inc., the Corporation which is named in the annexed Articles of Incorporation, and which is applying for a Certificate of Incorporation pursuant to the provisions of the Nonprofit Corporation Act of the State of New Mexico.

JOHN A. MYERS
Registered Agent

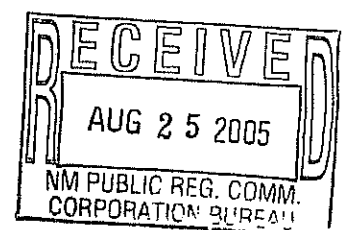
Subscribed and sworn to before me on the day, month, and year first above set forth:

Carla Slack
NOTARY PUBLIC



My Commission Expires: March 31, 2009

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Bylaws

Mulberry Gardens Courtyard
Condominium Association, Inc.

BYLAWS OF
MULBERRY GARDENS COURTYARD ASSOCIATION, INC.

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BYLAWS OF
MULBERRY GARDENS COURTYARD ASSOCIATION, INC.

ARTICLE I
Introductory Provisions

1.1. Applicability. These Bylaws provide for the governance of the Association pursuant to the requirements of Section 47-7C-6 of the New Mexico Condominium Act (the "Act") with respect to the Mulberry Gardens Courtyard Condominium created by the recording of the Declaration in the real estate records of Bernalillo County, New Mexico.

1.2. Definitions. Capitalized terms used herein without definition shall have the meanings specified for such terms in the Declaration to which these Bylaws pertain or, if not defined therein, the meanings specified or used for such terms in the Act.

1.3. Compliance. Pursuant to the provisions of the Act, every Unit Owner and all persons entitled to occupy a Unit shall comply with these Bylaws.

1.4. Office. The initial office of the Association and the Executive Board shall be located at 811 Marquette NW, Albuquerque, New Mexico 87102. The Executive Board may designate from time to time another location for such office.

ARTICLE II
The Association

2.1. Composition. The Association has been organized as a non-profit incorporated association organized under the laws of the State of New Mexico. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Association pursuant to the Act and the Declaration. The foregoing responsibilities shall be performed by the Executive Board or Managing Agent as more particularly set forth in these Bylaws.

2.2. Annual Meetings. An annual meeting of the Association shall be held at such time and date as determined by the Executive Board. At such annual meeting, the Executive Board shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 3.3 of these Bylaws and such other business as may properly come before the meeting may be transacted.

2.3. Place of Meetings. 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 Executive Board.

2.4. Special Meetings. The President shall call a special meeting of the Association if the President so desires or if so directed by resolution of the Executive Board

or upon a petition signed and presented to the Secretary by Unit Owners of not less than twenty percent (20%) of the aggregate Percentage Interests. The notice of any special meeting shall state the time, place and purpose thereof. Such meeting shall be held within sixty (60) days after receipt by the President of said resolution or petition. No business shall be transacted at a special meeting except as stated in the notice.

2.5. Notice of Meetings. The Secretary shall give to each Unit Owner a notice of each annual, regularly-scheduled or special meeting of the Association at least ten (10) but not more than fifty (50) days prior to such meeting, stating the time, place and items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes and any proposal to remove a director or officer. The giving of a notice of meeting in the manner provided in this Section and Section 10.1 of these Bylaws shall be considered service of notice.

2.6. Adjournment of Meetings. If at any meeting of the Association a quorum is not present, Unit Owners entitled to cast a majority of the votes represented at such meeting may adjourn the meeting to a time not less than forty-eight (48) hours after the time for which the original meeting was called.

2.7. Voting.

(a) Except as otherwise provided below, each Unit shall be entitled to vote on all matters properly submitted for vote to the membership of the Association. Each Unit Owner shall be entitled to the number of votes as provided for in the Declaration.

(b) 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 a majority in interest of the multiple 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. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. If more than one person owning such Unit is present at the meeting, then such vote shall be cast only in accordance with the agreement of a majority in interest of the multiple owners pursuant to Section 47-7C-10 of the Act. There shall be deemed to be a majority agreement if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit. Subject to the requirements of the Act, wherever the approval or disapproval of the Unit Owner is required by the 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.

(c) Except with respect to election of members of the Executive Board and except where a greater number is required by the Act, the Declaration or these Bylaws, the affirmative vote of the owners of a majority of the Percentage Interests in the Condominium that are entitled to vote and that are present in person or by proxy at a duly convened meeting at which a quorum is present is required to adopt decisions at any meeting of the Association. Unless otherwise provided, any specified percentage of the Unit Owners means the Unit Owners owning such Percentage Interests.

(d) Every Unit Owner entitled to vote at any election of members of the Executive Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the member is entitled, multiplied by the number of Directors to be elected. Those candidates for election receiving the greatest number of votes cast in such election shall be elected.

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

(f) The right to vote may not be severed or separated from any Unit, and any sale, transfer, or conveyance of the beneficial interest of the fee of any Unit to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

2.8. Proxies. A vote may be cast in person or by proxy. If a Unit is owned by more than one Person, each Owner of the Unit may vote or register protest to the casting of votes by the other Owners of the Unit through a duly executed proxy. Proxies shall be duly executed in writing. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of written notice of revocation from the grantor(s) of the proxy. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

2.9. Quorum.

(a) Except as set forth below, the presence, at the commencement of a meeting, in person or by proxy of Unit Owners owning forty percent (40%) or more of the Percentage Interests in the Condominium that are entitled to vote shall constitute a quorum at all meetings of the Association.

(b) If a meeting is properly adjourned, the quorum at such second meeting shall be deemed present throughout any meeting of the Association if Unit Owners that are able to cast thirty-three and one third (33-1/3%) percent or more of the aggregate Percentage Interests are present in person or by proxy at the beginning of the meeting.

2.10. 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 Act. All votes shall be tallied by tellers appointed by the President.

ARTICLE III
Executive Board

3.1. Number and Qualification. The affairs of the Association shall be governed by an Executive Board. The Executive Board shall be composed of three (3) natural persons.

3.2. Delegation of Powers; Managing Agent. The Executive Board may employ for the Condominium a "Managing Agent" at a compensation established by the Executive Board, and shall employ a Managing Agent for the first year of operation of the Condominium. The Managing Agent shall perform such duties and services as the Executive Board shall authorize, including, but not limited to, the duties listed in the Act, the Declaration and these Bylaws, but not including the powers listed below. Provided, however, that where a Managing Agent does not have the power to act under the Act, the Declaration on these Bylaws, such duties shall be performed as advisory to the Executive Board. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by the Act, the Declaration and these Bylaws other than the following powers:

- (a) to adopt the annual budget, any amendment thereto or to assess any Common Expenses;
- (b) to adopt, repeal or amend Rules and Regulations;
- (c) to designate signatories on Association bank accounts;
- (d) to borrow money on behalf of the Association; and
- (e) to acquire and mortgage Units.

Any contract with the Managing Agent must provide that it may be terminated with cause on no more than thirty (30) days' written notice, and without cause and without penalty or any termination fee on no more than ninety (90) days' written notice. The term of any such contract may not exceed three (3) years.

Any contract with the Managing Agent entered into during the period of Declarant Control as described in subsections D and E of Section 47-7C-3 of the Act shall provide that the Association shall have the right to terminate said contract without cause exercisable at any time after the termination of the period of Declarant Control.

3.3. Selection of Executive Board During Period of Declarant Control.

(a) The Declarant, or persons designated by the Declarant, may appoint and remove the members of the Executive Board during a period of Declarant Control, which terminates on the earlier of:

- (i) One hundred twenty days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant;

(ii) Two years after the Declarant has ceased to offer Units for sale in the ordinary course of business;

(iii) Three years after the first Unit is conveyed to a Unit Owner other than Declarant; or

(iv) Upon Declarant terminating the period of Declarant Control.

(b) The Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Executive Board before termination of that period, but in that event the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Executive Board, as provided in a recorded instrument executed by the Declarant, be approved by the Declarant before the actions become effective.

(c) Not later than sixty days after conveyance of fifty percent of the Units to Unit Owners other than the Declarant, at least one member and not less than twenty-five percent of the members of the Executive Board will be appointed by the Declarant from among the Unit Owners. No member so appointed will be an affiliate of the Declarant if such persons are available.

3.4. Election and Term of Office.

(a) On or before the termination of the period of Declarant Control, a meeting of the Association shall be held at which all of the members of the Executive Board appointed by the Declarant will resign, and the Unit Owners, including the Declarant if the Declarant owns one or more Units, will thereupon elect successor members of the Executive Board, a majority of whom will be Unit Owners.

(b) The terms of office of any Executive Board member to be elected shall be fixed at one (1) year. The members of the Executive Board shall hold office until the earlier to occur of the election of their respective successors or their death, adjudication of incompetency, removal, or resignation. An Executive Board member may serve an unlimited number of terms and may succeed himself.

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

(1) Each 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 at least one Unit Owner and a statement that the person nominated is willing to serve on the Executive Board. The Secretary shall mail or hand deliver the submitted items to every Unit Owner along with the notice of such meeting;

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

3.5. Removal or Resignation of Members of the Executive Board.

(a) At any regular or special meeting of the Association duly called and at which a quorum is present any one or more of the members of the Executive Board, except a member appointed by the Declarant, may be removed with or without cause by a two-thirds vote of all Unit Owners present, in person or by proxy, and entitled to vote.

(b) A member of the Executive Board may resign at any time and shall be deemed to have resigned upon transfer of title to his Unit, if, as a result of such transfer, such member of the Executive Board has no ownership interest in any Unit.

3.6. Vacancies. All vacancies of seats of elected members of the Executive Board shall be filled by a vote of a majority of the remaining members of the Executive Board. Such vote shall be conducted at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Any person so elected shall be a member of the Executive Board for the remainder of the term of the member being replaced. In the case of multiple vacancies, the person receiving the greatest number of votes shall be elected for the longest term, if the length of terms vary.

3.7. Organizational Meeting. The first meeting of the Executive Board following each annual meeting of the Association (hereinafter referred to as the "Organizational Meeting") shall be held within ten (10) days thereafter at such time and place fixed by the President (even if he is the outgoing President) at the meeting at which such Executive Board shall have been elected. No notice shall be necessary to the newly elected members of the Executive Board in order legally to constitute such meeting, providing a majority of the whole Executive Board shall be present at such meeting.

3.8. Regular Meetings. Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of its members, but such meetings shall be held at least twice a year. Notice of regular meetings of the Executive Board shall be given to each of its members, by mail or hand delivery, at least ten (10) business days prior to the day named for such meeting.

3.9. Special Meetings. Special meetings of the Executive Board may be called by the President on at least three (3) business days' notice to each of its members, given by mail or hand delivery, which notice shall state the time, place and purpose of the meeting. Special meetings of the Executive Board shall be called by the President or Secretary in like manner and on like notice on the written request of at least one (1) member of the Executive Board.

3.10. Waiver of Notice. Any member of the Executive Board may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Executive Board shall constitute a waiver of notice by him of the time, place and purpose of such meeting. If all members are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted as such meetings.

3.11. Quorum and Decision of the Executive Board. At all meetings of the Executive Board a majority of the members of the Executive Board shall constitute a quorum for the transaction of business, and the votes of the majority of the members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any reconvened 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. One or more members of the Executive Board may participate in and be counted for quorum purposes at any meeting by means of conference telephone or similar communication equipment pursuant to which all persons participating in the meeting can hear each other.

3.12. Compensation. No member of the Executive Board shall receive any compensation from the Association for acting as such, but may be reimbursed for any reasonable expenses incurred in the performance of his duties.

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

3.14. Action Without Meeting. Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board 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 Executive Board.

3.15. Validity of Contracts with Interested Executive Board Member. No contract or other transaction between the Association and one or more of its Executive Board members or between the Association and any corporation, firm, or association in which one or more of the Executive Board members of the Association are directors or officers, or are financially interested, shall be void or voidable because such Executive Board member or members are present at any meeting of the Executive Board which authorized or approved the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) The fact that an Executive Board member is also such a director or officer or has such financial interest is disclosed or known to the Executive Board and is noted in the minutes thereof, and the Executive Board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Executive Board member or members; or

(b) The contract or transaction is made in good faith and is not unconscionable to the Association at the time it is authorized, approved or ratified.

3.16. Inclusion of Interested Executive Board Members in the Quorum. Any Executive Board member holding such director or officer position or having such financial interest in another corporation, firm or association may be counted in determining the presence of a quorum at a meeting of the Executive Board or a committee thereof which authorizes, approves or ratifies a contract or transaction of the type described in the immediately preceding Section.

3.17. Limited Liability of the Executive Board. The Executive Board, and its members in their capacity as members, officers and employees:

(a) Shall not be liable for the failure of any service to be obtained by the Executive Board and paid for by the Association, or for injury or damage to persons or property caused by the elements or by another Unit Owner or person on the Property, or resulting from electricity, gas, water, rain, dust or sand which may leak or flow from the outside or from any part of the Building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place, unless in each such instance such injury or damage has been caused by the willful misconduct or gross negligence of the Association or the Executive Board;

(b) Shall not be liable to the Unit Owners as a result of the performance of the Executive Board members' duties for any mistake of judgment, negligence or otherwise, except for the Executive Board members' own willful misconduct or gross negligence;

(c) Shall have no personal liability in contract to a Unit Owner or any other person or entity under any agreement, check, contract, deed, lease, mortgage, instrument or transaction entered into by them on behalf of the Executive Board or the Association in the performance of the Executive Board members' duties;

(d) Shall not be liable to a Unit Owner, or such Unit Owner's tenants, employees, agents, customers or guests, for loss or damages caused by theft of or damage to personal property left by such Unit Owner or his tenants, employees, agents, customers or guests in a Unit, or in or on the Common Elements or Limited Common Elements, except for the Executive Board members' own willful misconduct or gross negligence;

(e) Shall have no personal liability in tort to a Unit Owner or any other person or entity, direct or imputed, by virtue of acts performed by or for them, except for the Executive Board members' own willful misconduct or gross negligence in the performance of their duties; and

(f) Shall have no personal liability arising out of the use, misuse or condition of the Building, or which might in any other way be assessed against or imputed to the Executive Board members as a result of or by virtue of their performance of their

duties, except for the Executive Board members' own willful misconduct or gross negligence.

3.18. Indemnification. Each member of the Executive Board in his capacity as an Executive Board member, officer or both, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding in which he may become involved by reason of his being or having been a member of the Executive Board and/or officer, or any settlement of any such proceeding, whether or not he is an Executive Board member, officer or both at the time such expenses are incurred, except in such cases wherein such Executive Board member and/or officer is adjudged guilty of willful misconduct or gross negligence in the performance of his duties. Advance indemnification of an Executive Board member or officer may be allowed by the Executive Board for reasonable expenses to be incurred in connection with the defense of the action, suit or proceeding, provided that the member or officer must reimburse the Association if it subsequently determined that the member or officer was not entitled to indemnification. In the event of a settlement, this indemnification shall apply only if and when the Executive Board (with the affected member abstaining if he is then an Executive Board member) approves such settlement and reimbursement as being in the best interests of the Association. The indemnification by the Unit Owners set forth in this Section shall be paid by the Association on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such. Such right of indemnification shall not be deemed exclusive of any other rights to which such Executive Board member and/or officer may be entitled as a matter of law or agreement or by vote of the Unit Owners or otherwise.

ARTICLE IV Officers

4.1. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer. The Association may also have, in the discretion of the Executive Board, one or more additional vice-presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of this Article. One person may hold two (2) or more offices, except those of President and Secretary.

4.2. Election. The officers of the Association except such officers as may be appointed in accordance with the provisions of the Section headed, "Subordinate Officers, etc.," or the Section headed, "Vacancies," of this Article shall be chosen annually by the Executive Board, and each shall hold office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

4.3. Subordinate Officers, Etc. The Executive Board, may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these Bylaws or as the Executive Board may, from time to time, determine.

4.4. Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the Executive Board members at the time in office, at any

regular or special meeting of the Executive Board, or, except in case of an officer chosen by the Executive Board, by any officer upon whom such power of removal may be conveyed by the Executive Board.

Any officer may resign at any time by giving written notice to the Executive Board or to the President, or to the Secretary of the Association. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or other cause shall be filled by a vote of the Executive Board at any regular or special meeting of the Executive Board.

4.6. President. The President shall be the Chief Executive Officer of the Association and shall, subject to the control of the Executive Board, have general supervision, direction and control of the business and the officers of the Association. He shall preside at all meetings of the members and at all meetings of the Executive Board. He shall be ex officio, a member of all the standing committees, including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of President of an Association and shall have such other powers and duties as may be prescribed by the Executive Board or these Bylaws.

4.7. Vice-President. In the absence or disability of the President, the Vice-President shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions upon the President. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Executive Board or these Bylaws.

4.8. Secretary. The Secretary shall keep, or cause to be kept, a book of minutes at the principal office of the Association or such other place as the Executive Board may order, of all meetings of the Executive Board and members, with the time and place of holding, whether regular or special, and if special, how authorized and the notice thereof given, the names of those present at the Executive Board meetings, the number of votes present or represented at the Executive Board meetings and the proceedings thereof.

The Secretary shall keep, or cause to be kept, at the principal office a register showing the names of the members and their addresses; the number of votes held by each; the number and date of any certificates issued for the same (if the Association causes certificates to be issued to evidence membership in the Association), and the number and date of cancellation of every certificate surrendered for cancellation.

The Secretary shall have charge of such books and papers as the Executive Board may direct, and perform all the duties as may be prescribed by the Executive Board or these Bylaws.

4.9. 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 in the name of the Executive Board, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Executive Board; and, in general, perform all the duties incident to the office of treasurer of a stock corporation organized under the laws of New Mexico.

4.10. Execution of Documents. All agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Two Thousand Dollars (\$2,000.00) shall be executed by any two (2) officers of the Association, at least one of them being the President or the Vice President. All such instruments for expenditures or obligations of Two Thousand Dollars (\$2,000.00) or less may be executed by any one (1) officer of the Association.

4.11. Compensation of Officers. No officer shall receive any compensation from the Association for acting as such officer, but may be reimbursed for any reasonable out-of-pocket expenses incurred in performing his duties.

4.12. Indemnification. The provisions of Section 3.18 hereof, regarding indemnification of members of the Executive Board, shall also apply in the same manner to officers of the Association.

ARTICLE V Common Expenses; Budgets

5.1. Determination Of Common Expenses And Assessments.

5.1.1 Fiscal Year. The fiscal year of the Unit Owners Association shall be January 1 through December 31 unless otherwise determined by the Board of Directors.

5.1.2 Preparation of Budget.

(a) At least ninety (90) days before the beginning of each fiscal year, the Executive Board 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 Association 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 Act, the Condominium Documents or a resolution of the Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. Such budget shall include such reasonable amounts as the Executive Board considers necessary to provide for reserves to meet unforeseen expenditures or to purchase any additional equipment or services. To the extent possible, a pro rata share of the property taxes for the Condominium shall be billed directly to each Unit Owner.

(b) As provided in the Act, within thirty days after adoption of any proposed budget for the Condominium, the Executive Board shall provide to all the Unit Owners a summary of the budget in a reasonably itemized form and shall set a date for a meeting of the Association to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all the Unit Owners reject the budget, the budget is 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 be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

(c) At least forty-five (45) days before the beginning of each fiscal year, the Executive Board 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 known special assessment payable by each Unit Owner. The ratified budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses for the Condominium.

5.1.3. Assessment and Payment of Common Expenses.

(a) Subject to the provisions of the Act and the Declaration, the total amount of the estimated funds required from assessments for the operation of the Property set forth in the ratified annual budget shall be assessed against each Unit Owner in proportion to his respective Percentage Interest, except for assessments that are disproportionate to Percentage Interests, if any, as addressed in Article VIII of the Declaration. Such assessment shall be a lien against each Unit Owner's Unit as provided in these Bylaws. On or before the first day of each fiscal year, and the first day or such other day of each succeeding month, quarter or other period in such fiscal year, as determined by the Executive Board, each Unit Owner shall be obligated to pay to the Executive Board or the Managing Agent (as determined by the Board), a portion of such annual assessment, the numerator of which is one and the denominator is the number of periodic regular assessments made within a year (e.g., one-twelfth ($1/12^{\text{th}}$) of the annual assessment amount if there are monthly assessments, one-fourth ($1/4^{\text{th}}$) of the annual assessment amount if there are quarterly assessments). Within ninety (90) days after the end of each fiscal year, the Executive Board shall supply to all Unit Owners, and to each Qualified Mortgagee requesting the same, 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 Executive Board 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, at the discretion of the Executive Board, be placed in reserve accounts, be returned to the Unit Owners pro rata in accordance with each Unit Owner's Percentage Interest, or be credited according to each Unit Owner's Percentage Interest to the next periodic installment or installments due from Unit Owners, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners and shall be payable either: in full with payment of the next assessment due; or in equal installments over such period as the Executive Board may determine.

(b) The Executive Board may include in the periodic assessments to Unit Owners or in separate billings an estimated amount for the water submetered to each Unit, which estimate may be based on Percentage Interest, size of Unit, past usage or otherwise. The Executive Board or Managing Agent shall read the submeters to each Unit at least once a year or such shorter period as determined by the Executive Board. The amounts billed for the water submetered to each Unit shall be reconciled against actual use, notice of the reconciliation for the Unit shall be given to the Unit Owner, and the Unit Owner shall pay any amounts owing to the Association within ten (10) days of notice, and any amount collected over actual use may be returned to the Unit Owner or credited to amounts then owing or owing in the future from the Unit Owner.

5.1.4. Reserves. The Executive Board shall build up and maintain a reasonable reserve fund for operations, maintenance, repair, contingencies and replacements, which fund shall be maintained out of regular assessments. 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, the Executive Board may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Percentage Interests, and which may be payable in a lump sum or in installments as the Board may determine. The Executive Board shall serve notice of any such further assessment on 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 days after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted periodic amount or, if such further assessment is not payable in installments, the amount of such assessment.

5.1.5. Initial Capital Payment and Security Deposit.

(a) The Declarant shall establish an initial working capital fund in an amount equal to three months of estimated common charges for each Unit. Each Unit=s share of the working capital fund shall be collected either at or prior to the earlier of the time of closing of the sale of the Unit or the termination of the period of Declarant Control of the Association. The working capital fund shall be transferred to the Association for deposit to a segregated fund at or before the termination of the period of Declarant Control. When an unsold Unit is sold, the Declarant shall be reimbursed for funds Declarant paid or is paying to the Association for the unsold Unit=s share of the working capital fund from funds collected at closing. The working capital fund may be used for certain prepaid items, initial equipment, supplies, services, organizational costs and other start-up costs, unforeseen expenditures, and for such other purposes as the Executive Board may determine. Any amounts paid into this fund should not be considered as advance payments of regular assessments. The Declarant shall not use the working capital funds to defray any of the Declarant=s expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

(b) Each person or entity that purchases a Unit directly from the Declarant shall pay to the Association, at the time of closing of the sale of the Unit, \$250.00 per Unit purchased as a security deposit. A security deposit shall be held by the

Association without liability for interest and as security for the performance of the covenants and obligations of the Unit Owner under the Condominium Documents, including the Unit Owner's obligation to pay Assessments. Security deposits need not be kept in a segregated account. Security deposits are not advance payments of Assessments and are not a measure of the Association's damages in case of a violation of the Condominium Documents. Upon the occurrence of a violation or breach of the Condominium Documents by the Unit Owner, the Association may, from time to time, without prejudice to any other remedy, use the Unit Owner's security deposit to the extent necessary to make good any arrearages of the Unit Owner's Assessments and any other damages, injury, expenses, costs, late charges, interest, attorney's fees or liability caused to or incurred by the Association in relation to such breach, including any fines to the Unit Owner. Following any such application of the security deposit, the Unit Owner shall pay to the Association on demand the amount so applied in order to restore the security deposit to its original amount. Any remaining balance of the Unit Owner's security deposit shall be returned by the Association to the Unit Owner upon the Unit Owner's sale or transfer of the Unit, but only if the Unit Owner is not then in default under the Condominium Documents and if the Association has received from the transferee the transferee's security deposit of \$250.00.

5.1.6. Initial Budget. Upon taking office, the first Executive Board elected or designated pursuant to these Bylaws shall determine the budget, for such period as determined by the Executive Board. The Executive Board shall determine when assessments shall commence. Assessments shall be levied and become a lien against the Unit Owners as provided in this Article.

5.1.7. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board 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 periodic payment which is due more than ten (10) days after such new annual or adjusted budget shall have been delivered.

5.1.8. Accounts. Except as may otherwise be provided herein, in the Act or in the Declaration, all sums collected by the Executive Board with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund.

5.2. Payment of Common Expenses. Each Unit Owner shall pay the Common Expenses, including Limited Common Expenses, assessed by the Executive Board pursuant to the provisions of this Article. Multiple owners of a single Unit will be jointly and severally liable for the Common Expense Liability with respect to that Unit. No Unit Owner may be exempted from liability for the assessment of Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to the date of recordation of a conveyance by him in fee of such Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges

and assessments shall be paid in full and discharged. Unpaid assessments against a Unit are the personal obligation of the Unit Owner who owned the Unit at the time the assessment became due, and are not the personal obligation of a successor in title to such Unit Owner unless such successor agrees to assume the obligation; provided, however, that the lien created by such unpaid assessments shall continue to be a lien on the Unit after transfer of title, foreclosable as set forth herein; and provided, further, that each mortgagee under any recorded first mortgage upon a Unit made in good faith and for value who comes into possession of a Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such person comes into possession thereof.

5.3. Collection of Assessments. The Executive Board, or the Managing Agent at the request of the Board, may take action to collect any assessments for Common Expenses due from any Unit Owner. Any assessment, assessment installment or other charge not paid on or before the ninth (9th) day following the day on which the payment is due shall accrue a late charge in the amount of Twenty Dollars (\$20.00), or such other amount as may be established from time to time by the Executive Board. Continuing additional late charges of the same amount shall accrue on the same day each month, or other period as determined by the Executive Board, thereafter for each prior assessment, assessment installment or other charge that then remains unpaid. Continuing late charges for each unpaid assessment or charge may be assessed monthly even if Assessments are paid at a greater interval. Any assessment, assessment installment, late charge, fine, cost, attorneys fee, or other charge not paid on or before the ninth (9th) day following the day on which the payment is due shall bear interest starting on the tenth (10th) day after due at the rate of twelve percent (12%) per year, or such other rate established by the Executive Board, not to exceed eighteen percent (18%) per year.

5.4. Statement of Common Expenses. The Executive Board shall promptly provide any Unit Owner, and any holder, servicer, insurer or guarantor of a Qualified Mortgage on such Unit, so requesting the same in writing, with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner. If requested by a Unit Owner, such statement shall be in recordable form and furnished within ten business days after receipt of the request. The Executive Board may impose a reasonable charge to cover the cost of preparation of such statement.

5.5 Lien for Assessments.

(a) The Association has a lien on a Unit for any assessment levied against the Unit or fines imposed against a Unit Owner from the time the assessment or fine becomes due. The lien of the Association may be foreclosed in like manner as a mortgage on real estate. Fees, charges, late charges, fines and interest and attorney fees are enforceable as assessments as provided in this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of the claim of lien for assessment as

provided in this Section is required. However, the Executive Board may record one or more claims or notices in the real estate records relating to an amount or amounts due to the Association that are past due; in such case, the Executive Board shall have the right to charge the Unit Owner a fee, in an amount or amounts determined by the Executive Board, for the preparation of each such notice or claim, and each release thereof, as well as recording costs.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments become due.

(d) This section does not prohibit actions to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(e) A judgment or decree in any action brought as provided in this Section may include costs and reasonable lawyer=s fees for the prevailing party.

ARTICLE VI Compliance and Default

6.1. Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Declaration, these Bylaws, the Rules and Regulations and the Act, as any of the same may be amended from time to time. In addition to the remedies provided in the Act and the Declaration, a default by a Unit Owner shall entitle the Association, acting through its Executive Board or through the Managing Agent, to the following relief:

(a) 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 his tenants, guests, invitees or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance premiums occasioned by improper use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged breach by a Unit Owner of the terms of the Act or the Condominium Documents, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Association, the Executive Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, these Bylaws, the Rules and Regulations or the Act shall not constitute a waiver of the right of the Association, the Executive Board 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 Executive Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Declaration, these Bylaws, the Rules and Regulations or the 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 Declaration, these Bylaws, the Rules and Regulations or the Act or at law or in equity.

(d) Abating and Enjoining Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Executive Board, the breach of any Bylaw contained herein or the breach of any provision of the Declaration or the Act shall give the Executive Board the right, in addition to any other rights, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

ARTICLE VII Insurance

7.1. Power of Attorney. The Association is hereby irrevocably appointed as attorney-in-fact for each Unit Owner and for each holder of a mortgage or other lien upon a Unit and for each owner of any other interest in the Property for the purpose of purchasing and maintaining insurance as set forth in this Article including: the collection and appropriate deposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

7.2. Insurance Trustee. The Executive Board shall have the option, in its sole discretion, of naming as an insured, on behalf of the Association, an Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement. The duty of the Insurance Trustee shall be to receive, hold or otherwise properly dispose of, in accordance with Section 47-7C-13 of the Act, proceeds of insurance designated in the Insurance Trust Agreement in trust for Unit Owners and their mortgagees as their interests may appear.

7.3. Types and Amounts. Commencing not later than the time of the conveyance of the first Unit to a person other than the Declarant, the Association shall, to the extent reasonably available, obtain and maintain the types and amount of insurance set forth in Sections 7.3.1 through 7.3.3, and may obtain insurance as set forth in Sections 7.3.4 through 7.3.6. Except as otherwise provided, the premiums for all such insurance policies shall be a Common Expense.

7.3.1. Hazard Insurance.

(a) A "Amaster" or "blanket" type policy of hazard insurance, with an endorsement for extended coverage, or such other fire and casualty insurance as the Executive Board may determine provides equal or greater protection for the Unit Owners and their mortgagees. The insurance must provide the coverage set forth in Subsection b hereof and must comply with the applicable requirements of Section 7.4 hereof. Such hazard insurance shall provide coverage of the Common Elements (including

the Limited Common Elements), except land, foundations, excavations and other items normally excluded from coverage, and shall provide coverage of fixtures that are part of the Common Elements and building service equipment and common personal property and supplies belonging to the Association. Such hazard insurance, to the extent reasonably available, shall include the Units, but need not include improvements and betterments installed by Unit Owners, and shall not include personal property belonging to the Unit Owner or occupant. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage to be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (regardless of whether or not such property is a part of the Common Elements) shall be covered by such hazard insurance. Such hazard insurance shall insure against all risks of direct physical loss commonly insured against. If such hazard insurance no longer becomes available in the future, the Association shall obtain such comparable insurance as is then available. The amount of any such hazard insurance obtained pursuant to this Section shall be equal to the full insurable replacement value of the insured property, without deduction for depreciation (i.e., one hundred percent (100%) of current "replacement cost" exclusive of land, foundations, excavation and other items normally excluded from coverage, but including all Building service equipment), with an "agreed amount endorsement" or its equivalent, if the policy includes a coinsurance clause and if available, and an "inflation guard endorsement," if available.

(b) Such hazard insurance shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;

(2) all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(c) Such hazard insurance policy may, at the option of the Association, contain a "deductible" provision in an amount to be determined by the Executive Board but not to exceed the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. However, for losses related to individual Units that are covered by the blanket policy for the project, the deductible related to the individual Unit should not exceed the higher of One Thousand Dollars (\$1,000.00) or one percent (1%) of the replacement costs of the Unit.

7.3.2. Comprehensive Liability Insurance.

(a) Comprehensive Liability Insurance complying with the requirements of Section 7.4 hereof, insuring the Unit Owners, in their capacity as Unit Owners and Association members and any Managing Agent retained by the Association, against any liability to the public or to other Unit Owners, their tenants or invitees, relating in any way to the ownership, operation, maintenance and/or use of the Common Elements and any part thereof, the public ways of the project, any other areas under the

Association's supervision, and commercial spaces owned by the Association, if any, whether or not leased to some third party.

(b) Such insurance policy shall contain a "severability of interest endorsement" or equivalent coverage which precludes the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or another Unit Owner.

(c) Coverage shall be in an amount deemed satisfactory to the Executive Board, but shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage for any single occurrence.

(d) Coverage under this policy shall include legal liability arising out of lawsuits related to employment contracts of the Association.

7.3.3. Other Insurance Required By Law. The Association shall maintain any insurance coverage required by law, such as workmen=s compensation insurance if applicable.

7.3.4. Fidelity Bonds. At the election of the Executive Board:

(a) Fidelity bonds or insurance coverage against dishonest acts on the part of such persons (including by way of illustration and not limitation, Association members, officers, directors, trustees, managers, agents, employees and volunteers) handling or responsible for funds belonging to or administered by the Association. In the event the Association has delegated some or all of the responsibility for the handling of funds to a Managing Agent, such bonds or insurance coverage may include officers, employees and agents of such Managing Agent.

(b) Such fidelity bond or insurance shall name the Association as the named insured and be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any time while the bond is in force which in no event shall be less than a sum equal to three months= aggregate assessments on all Units plus reserve funds.

(c) In connection with such coverage, an appropriate endorsement to such policy of bond in order to cover any persons who serve without compensation may be added if the policy would not otherwise cover volunteers.

(d) Such fidelity bond or insurance may also:

(1) name the Association as an obligee;

(2) contain waivers by the issuers of the bonds of all defenses based upon the exclusion of any person hereunder.

7.3.5. Indemnification Insurance. At the election of the Executive Board, insurance to satisfy the indemnification obligation of the Association and all Unit Owners set out in these Bylaws, if and to the extent available.

7.3.6. Other Insurance. The Association may carry any other insurance it deems appropriate to protect the Association, the Executive Board, the Managing Agent or the Unit Owners.

7.4. Required Provisions: Insurance Company.

7.4.1. Required Provisions. Insurance obtained by the Association shall be in accordance with the following provisions:

(a) Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Executive Board or its authorized representative.

(b) With respect to the insurance policies issued to the Association and covering all or any part of the Property, such policies shall provide that:

(1) any right of subrogation as to any and all claims against the Association, any Managing Agent, the Unit Owners and their respective tenants, employees, agents, customers and guests, shall be waived;

(2) such policies cannot be cancelled, invalidated or suspended by means of the conduct of any one or more Unit Owners, all defenses based upon coinsurance or acts of the insured and all rights to subrogation against any Unit Owner or member of his household being waived by the insurer, and in no event may cancellation, material modification, invalidation, suspension or refusal to renew for any reason be effected without at least thirty (30) days' prior written notice to the Association, any Insurance Trustee, each Unit Owner, each holder of a first mortgage who is listed as a scheduled holder of a first mortgage in the policy, and each holder of a first mortgage to whom a certificate or memorandum of insurance has been issued.

(3) such policies cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Association or of any Managing Agent without a prior demand in writing that the Association or any Managing Agent, as the case may be, cure the defect within a reasonable period of time;

(4) any "no other insurance" clause in such policies shall not prohibit Unit Owners from obtaining insurance on their individual Unit provided such insurance policy conforms with the requirements of this Article VII.

(5) the name of the insured under each policy required pursuant to this Article VII shall be stated in form and substance substantially as follows: Mulberry Gardens Courtyard Association, Inc. for the use and benefit of the individual owners of the Units contained in Mulberry Gardens Courtyard Condominium. The policies may alternatively be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual owners, as provided for in Section 7.2 above.

(6) loss payable under each policy required pursuant to this Article VII shall be in favor of the Association or Insurance Trustee (if an Insurance Trustee has been appointed by the Executive Board pursuant to Section 7.2), as a trustee for the Unit Owners and the Unit Owner's mortgagees, as their interests may appear. Policies shall contain the standard mortgage clause, or equivalent endorsement.

(7) coverage shall not be prejudiced by: (i) any act or omission of one or more Unit Owners when such act or omission is not within the control of the Association; or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(8) all policies or property insurance shall provide that, despite any provisions giving the insurer the right to elect to restore damage in lieu of a cash settlement, such options shall not be exercisable (i) without the prior written approval of the Executive Board, or (ii) when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party with any requirement of law.

(9) insurance coverage obtained and maintained by the Association pursuant to the requirements of this Article VII shall be primary, and may not be brought into contribution with insurance purchased by Unit Owners or their mortgagees.

(10) any Insurance Trust Agreement will be recognized.

(11) insurance coverage shall not provide that contributions may be made against any Unit Owners, mortgagees or the Association.

7.4.2. Insurance Company. Each insurance policy obtained by the Association shall be written with a generally acceptable insurance carrier licensed to do business in the State of New Mexico that holds a rating deemed satisfactory by the Executive Board. If a first mortgage on a Unit is held or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, the requirements of such applicable entity regarding the qualifications of insurance carriers shall be followed.

7.5. Unit Owner's Insurance.

7.5.1. Each Unit Owner may obtain additional insurance at his own expense; provided, however, that: (i) such policies shall not be invalidated by the waivers of subrogation contained in the Condominium Documents; and (ii) no Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy which the Association may have in force on the Property at any particular time.

7.5.2 Any Unit Owner who obtains individual insurance policies covering any portion of the Property, other than: (i) personal property belonging to such Owner; or (ii) the individual Unit of such Owner, shall be required to file a copy of such

individual policy or policies with the Association within thirty (30) days after purchase of the insurance.

7.5.3. The Executive Board shall have the power to require all Unit Owners to carry such types of insurance on their Units as the Executive Board may reasonably require, including, without limitation, insurance on all portions of the Unit.

ARTICLE VIII

Additional Provisions Regarding Operation of The Property

8.1 Association Records.

(a) Inspection by Members and Mortgagees. Current copies of the Declaration, the Association's Articles of Incorporation, these Bylaws, any Rules and Regulations, as well as the Association's books, records, and financial statements, shall be made available for inspection by Unit Owners or by holders, servicers, insurers, or guarantors of a Qualified Mortgage.

(b) Inspection by Prospective Purchasers. The Association also shall make available for inspection by prospective purchasers of a Unit current copies of the Declaration, these Bylaws, any Rules and Regulations, and the most recent annual financial statement.

(c) Rules of Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) the normal business hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(d) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents at the expense of the Association.

(e) Availability of Audited Statements. If there is no audited statement available for a fiscal year of the Association, any holder of a mortgage on a Unit shall have the right to have an audited statement prepared at its own expense.

8.2 Resale of Unit.

(a) As provided in Section 47-7D-9 of the Act, except in the case of a sale where delivery of a disclosure statement is required, or unless exempt as provided in the Act, a Unit Owner will furnish to a purchaser before conveyance a copy of the

Declaration (other than the Plats and Plans), the Bylaws, any Rules and Regulations and a resale certificate from the Association containing:

(i) a statement disclosing the existence and terms of any right of first refusal or other restraint on the free alienability of the Unit;

(ii) a statement providing the amount of the periodic Common Expense assessment and any unpaid Common Expense or special assessment currently due and payable from the selling Unit Owner;

(iii) a statement of any other fees payable by Unit Owners;

(iv) a statement of any capital expenditures anticipated by the Association for the current and two next succeeding fiscal years;

(v) a statement of the amounts of any reserves for capital expenditures and of any portions of those reserves designated by the Association for any specified projects;

(vi) the most recent regularly prepared balance sheet and income and expense statement of the Association;

(vii) the current operating budget of the Association;

(viii) a statement of any unsatisfied judgments against the Association;

(ix) a statement describing any insurance coverage provided for the benefit of Unit Owners; and

(x) a statement of the remaining term of any leasehold estate affecting the Condominium and the terms governing any extension or renewal of the leasehold estate.

(b) The Association, within ten business days after receipt of a request by a Unit Owner, will furnish a certificate containing the information necessary to enable the Unit Owner to comply with this Section. A Unit Owner providing a certificate as provided in Subsection (a) of this Section is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate.

(c) A Unit Owner is not liable to a purchaser for the failure or delay of the Association to provide the certificate in a timely manner, but the purchase contract is voidable by the purchaser until the certificate has been provided and for seven days after the certificate is provided or until conveyance, whichever first occurs.

ARTICLE IX Amendments

9.1. Amendment to Bylaws. Except as otherwise provided in any one or more of these Bylaws, the Declaration or the Act, the provisions of these Bylaws may be amended only by vote of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws; provided, however, that if such amendment shall make any change which would have a material effect upon any of the rights, privileges, powers and options of the Declarant, such amendment shall require the joinder of the Declarant; and further provided, that the approval of the applicable percentage of Eligible Mortgagees as set forth in Section 6.6 of the Declaration shall be obtained if required by such Section.

9.2. Amendments to the Declaration. The Declaration may be amended pursuant to the provisions of the Act and the Declaration.

ARTICLE X Miscellaneous

10.1. 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 sent by United States mail, postage prepaid, (i) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (ii) if to the Association, the Executive Board or to the Managing Agent, at the principal office of the Managing Agent if one exists, or at the principal office of the Association if no Managing Agent exists, 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 designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

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

10.3. 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.

10.4. Construction. These condominium instruments are intended to comply with all of the applicable provisions of the Act and shall be so interpreted and applied.

Dated: July 1, 2006.

MULBERRY GARDENS COURTYARD
ASSOCIATION, INC.

By: Sean Gilligan
Sean Gilligan, President

By: Marilyn Keller
Marilyn Keller, Secretary

Declaration of Covenants, Conditions and Restrictions

Mulberry Gardens Courtyard
Condominium Association, Inc.

DECLARATION OF MULBERRY GARDENS COURTYARD CONDOMINIUM

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DECLARATION OF MULBERRY GARDENS COURTYARD CONDOMINIUM

ARTICLE I SUBMISSION: DEFINED TERMS

Section 1.1. Declarant; Property; County; Name. Mulberry Gardens, LLC, a New Mexico limited liability company, hereinafter sometimes referred to as the "Named Declarant", owner in fee simple of the real estate located in Albuquerque, Bernalillo County, New Mexico, more particularly described on the attached Exhibit A, including all easements, rights and appurtenances thereunto belonging and the Buildings and improvements erected thereon (hereinafter collectively referred to as the "Property"), hereby submits the Property to the provisions of the New Mexico Condominium Act, Section 47-7A-1 NMSA 1978 et seq. (hereinafter referred to as the "Act"), to be known as "Mulberry Gardens Courtyard Condominium" (hereinafter sometimes referred to as the "Condominium").

Section 1.2. Provisions of the Act. The provisions of the Act and those amendments thereto which by their terms would be applicable to the Condominium shall apply to and govern the operation of the Condominium, except to the extent that contrary provisions, not prohibited by the Act as so amended, are contained in the Condominium Documents.

Section 1.3. Applicability of Condominium Documents. Each present and future owner, lessee, occupant and mortgagee of a Unit shall be subject to and shall comply with the provisions of the Act, this Declaration (including the Plats and Plans), the Bylaws and the Rules and Regulations and with the covenants, conditions and restrictions as set forth in this Declaration (including the Plats and Plans), the Bylaws, the Rules and Regulations and the deed to such Unit; provided that nothing contained herein shall impose any lessee or mortgagee of a Unit any obligation which the Act or one or more of such documents, or both, make applicable only to Unit Owners (including, without limitation, the obligation to pay assessments for Common Expenses). The acceptance of a deed or mortgage to any Unit, or the entering into of a lease or the entering into occupancy of any Unit, shall constitute an agreement that the provisions of the Act, this Declaration (including the Plats and Plans), the Bylaws, the Rules and Regulations and the covenants, conditions and restrictions set forth in the deed to such Unit are accepted and ratified by such grantee, mortgagee or lessee insofar as applicable. All of such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof.

Section 1.4. Defined Terms.

1.4.1. Capitalized terms not otherwise defined herein or in the Plats and Plans shall have the meanings specified or used in the Act.

1.4.2. The following terms are used or defined in general terms in the Act and shall have specific meanings herein as follows:

a. "Association" means the Unit Owners' Association of the Condominium, named Mulberry Gardens Courtyard Association, Inc., and its successors organized as provided in Section 47-7C-1 of the Act.

b. "Building" means the structure or structures making up the Condominium.

c. "Bylaws" means the document having that name and provided for by Section 47-7C-6 of the Act, as such document may be amended from time to time.

d. "Common Elements" means all portions of the 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 of the Act.

g. "Condominium" means the real estate described in Section 1.1. above.

h. "Declarant" means the Named Declarant, except that any successor to such Named Declarant as to Special Declarant Rights shall as to such Special Declarant Rights be the "Declarant".

i. "Declaration" means this document and the Plats and Plans, as the same may be amended from time to time.

j. "Executive Board" means the Executive Board of the Association.

k. "Limited Common Element" means a portion of the Common Elements allocated by this Declaration or by operation of Subsections B and D of Section 47-7B-2 of the Act for the exclusive use of one or more but fewer than all of the Units.

l. "Plats and Plans" means the Condominium Plat of Mulberry Gardens Courtyard Condominium, covering the Property, recorded or to be recorded in the records of Bernalillo County, New Mexico, which constitutes a part of the Declaration and is incorporated herein by reference, as the same may be amended or supplemented from time to time.

m. "Property" means the Property described in Section 1.1. above.

n. "Rules and Regulations" means such rules and regulations as are promulgated by the Executive Board from time to time with respect to various details of the use of all or any portion of the Property or other matters related to the Condominium which either supplement or elaborate upon the provisions in the Declaration or the Bylaws.

o. "Special Declarant Rights" means Special Declarant Rights as defined in Section 47-7A-3(Y) of the Act and such additional rights reserved for the benefit of the Declarant as set forth in the Condominium Documents.

p. "Unit" means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Article II of this Declaration and in the Plats and Plans.

q. "Unit Owner" means a person or persons, including the Declarant, who owns a Unit in fee simple, and does not include a person having an interest in a Unit solely as security for an obligation.

1.4.3. The following terms when used herein shall have the meanings set forth below:

a. "Condominium Documents" consist of this Declaration including the Plats and Plans, plus the Bylaws and the Rules and Regulations.

b. "Declarant Control" means the period during which the Declarant, or persons designated by him, may appoint and remove the officers and members of the Executive Board, as provided in Section 47-7C-3 of the Act.

c. "Eligible Mortgagee" means a holder of a first mortgage on a Unit who has submitted a written request that the Association notify said holder on any proposed action requiring the consent of a specified percentage of such Eligible Mortgagees holders or who has submitted a written request for notice pursuant to Section 6.5.1 hereof. The mortgage held by an Eligible Mortgagee is referred to herein as an "Eligible Mortgage."

d. "Qualified Mortgage" means any of the following: (i) any first mortgage on a Unit; (ii) any junior mortgage on a Unit which is to the Declarant or to the seller of a Unit; or (iii) a mortgage that is approved by the Executive Board as a Qualified Mortgage. A holder of a Qualified Mortgage is referred to herein as a "Qualified Mortgagee."

e. "Patio" means the patio and small grounds area that exclusively serve a ground floor Unit, the boundaries of which are shown on the Plats and Plans.

f. "Percentage Interest" means the undivided ownership interest in the Common Elements which is appurtenant to each Unit, as set forth in Exhibit B hereto.

ARTICLE II
PERCENTAGE INTERESTS; ALLOCATION OF COMMON ELEMENTS AND
COMMON EXPENSE LIABILITIES; UNIT IDENTIFICATION AND BOUNDARIES;
MAINTENANCE RESPONSIBILITIES; VOTING; DEVELOPMENT AND FACILITIES

Section 2.1. Percentage Interests. Attached to this document as Exhibit B is a list of all Units by their Identifying Numbers (as shown on the Plats and Plans) and the Percentage Interest appurtenant to each Unit. The Percentage Interest of each Unit was determined pursuant to the following calculations: the sum of the size of the Unit in square feet plus twenty-five percent (25%) of the size in square feet of the garage that serves the Unit, if any, divided by the sum of the aggregate of the sizes of all Units plus twenty-five percent (25%) of the aggregate of the sizes of all of the garages. The word "size", for these purposes, means the number of square feet of floor space of the Unit measured from the Unit boundaries as shown on the Plats and Plans, or the number of square feet of floor space of the garage as shown on the Plats and Plans, as applicable. The Percentage Interests as so computed have been rounded so that the sum of the Percentage Interests of all Units shall equal one hundred percent (100%). For purposes of the calculations, the measurements set forth on the Plats and Plans and on the attached Exhibit B shall be controlling. The Common Expense Liability of each Unit shall be allocated in accordance with each Unit's Percentage Interest, except as may be specifically provided otherwise in the Act, the Articles of Incorporation or the Bylaws of the Association, or this Declaration. Each Unit Owner will own a share in the Common Elements and on any surplus possessed by the Association in accordance with each Unit Owner's Percentage Interest.

Section 2.2. Unit Boundaries. The boundaries of each Unit are situated as shown on the Plats and Plans and are determined in the following manner:

- a. The upper boundary of the Unit will be the ceilings.
- b. The lower boundary of the Unit will be the floors.
- c. The vertical boundaries of the Unit will be the Unit boundary walls as reflected on the Plats and Plans.
- d. Except as otherwise provided in this Declaration:

(1) If walls, floors or ceilings are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of such walls, floors or ceilings are a part of the Unit, and all other portions of such walls, floors or ceilings are a part of the Common Elements:

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common

Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements;

(3) Subject to the terms of Subsection (d)(2) and (d)(9) of this Section, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit;

(4) Any shutters, awnings, window boxes, doorsteps or stoops and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to that Unit; and

(5) Each Patio and deck is located outside the boundaries of a Unit and is a Limited Common Element allocated exclusively to the Unit it serves. Each structure making up a Patio or deck is a Limited Common Element allocated exclusively to the Unit it serves, except for any patio walls, which are Common Elements, and other Common Elements as provided in Section 2.2(d)(1)). Any trees, shrubs and hedges planted by the Declarant or the Association in the Patios are Common Elements.

(6) The garages, as identified on the Plats and Plans, are Limited Common Elements. Each garage is allocated exclusively to a Unit as set forth on the attached Exhibit C.

(7) The central courtyard, the courtyard access gates, the stairs to the second story Units, and the walkways on the second floor located outside of a Unit are all Common Elements.

(8) The outdoor parking spaces on the Property are Common Elements, but the Executive Board shall have the right to regulate them pursuant to Section 2.6.3.

(9) The heating unit serving a single Unit and the air conditioning/condenser unit serving a single Unit, both located outside of the Unit on the roof of the Building, are part of the Unit that they serve.

Section 2.3. Relocation of Boundaries and Subdivision of Units.

a. The boundaries between any adjoining Units may not be relocated as addressed in Section 47-7B-12 of the Act.

b. A Unit may not be subdivided into two or more units as addressed in Section 47-7B-13 of the Act.

Section 2.4. Maintenance and Alteration.

2.4.1. Maintenance and Alteration of Common Elements.

a. Except as provided in Section 2.4.1(c), the maintenance, repair, replacement and operation of the Common Elements, including the portions of the boundary walls of the Units that are Common Elements, and including the Limited Common Elements, will be the responsibility of the Association. The trimming, watering, care and replacement of Common Element landscaping, including any trees, shrubs and hedges planted by the Declarant or the Association located in the Patios, will be the responsibility of the Association.

b. Except as specifically provided in Section 2.4.1(c), Section 2.4.1(d) or otherwise in the Condominium Documents, Unit Owners shall not paint, alter, modify, or otherwise decorate or change the appearance of any portion of the Common Elements (including Limited Common Elements), the exterior of a Unit or the exterior of the Condominium, including landscaping.

c. Subject to any applicable Rules and Regulations and the applicable provisions of this Declaration, including Section 5.1.2:

(1) The Unit Owner of a Unit exclusively served by a garage, Patio or deck shall be responsible for the day-to-day cleanliness and orderliness of such areas.

(2) The Unit Owner of a Unit exclusively served by a garage, Patio or deck may change the appearance of such garage, Patio or deck by placing movable furniture and other permitted personal property therein. The surfaces of the interior of the garage may be painted by the Unit Owner.

(3) Subject to Section 5.1.2(l), a Unit Owner may not add or replace pavement, brick, tile or other Patio ground surface unless receiving prior approval pursuant to the applicable provisions of Section 2.4.3.

(4) The Unit Owner of a Unit exclusively served by a garage shall be responsible for the maintenance and replacement of the garage door opener for that garage at the Unit Owner's expense.

(5) The Unit Owner of a Unit served by a Patio shall not plant trees, shrubs, hedges, lawns or other landscaping or plants in the Patio except after receiving approval pursuant to the applicable provisions of Section 2.4.3. Subject to Rules and Regulations, potted plants are permitted in Patios.

(6) The provisions of Section 2.4.2(c) shall apply as to the Association's ability to perform the Unit Owner's obligations for maintenance in or on a garage, Patio or deck.

d. After acquiring an adjoining Unit, a Unit Owner may remove or alter any intervening partition that is a Common Element or create apertures in a Common Element, as addressed in Section 47-7B-11(C) of the Act, as long as said action does not impair or adversely affect the Building or Condominium as provided in Section 2.4.3(b)(1), the action is approved by the Committee, in its discretion, in accordance with Section 2.4.3(a), after the Unit Owner has submitted detailed plans and specifications relating thereto, and the Unit Owner complies with the provisions of Section 2.4.3(c).

2.4.2. Maintenance of Units.

a. The association will maintain, repair, and replace:

(1) All portions of a Unit contributing to the support of the Unit except interior surfaces, which portions will include but not be limited to the floor and ceiling slabs and load-bearing columns and load-bearing walls;

(2) All fixtures on the exterior of the Unit; and

(3) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association; and all the facilities contained within a Unit which service part of parts of the Condominium other than the Unit within which contained.

All incidental damage caused to a Unit by the Association's work will be promptly repaired at the expense of the Association.

b. The responsibility of the Unit Owner will be:

(1) To maintain, repair, and replace at the expense of the Unit Owner all portions of the Unit of the Unit Owner except the portions to be maintained, repaired and replaced by the Association; the Unit Owner's responsibility will include the maintenance, repair and replacement of cooling and heating apparatus exclusively serving that Unit (any entry on the roof to take such action shall be subject to Section 5.1.2(n) and any Rules and Regulations), except that the Executive Board, may, but shall not be required to, maintain, repair and/or replace such cooling and heating apparatus upon such terms and during such period or periods as it deems appropriate;

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Unit; and

(3) To promptly report to the Association any defect or need for repairs the responsibility for which is that of the Association.

c. The Association may elect to, but shall not be required to, maintain, repair or replace any Unit or portion thereof (or certain Limited Common Elements as addressed in Section 2.4.1(c)) if (i) the Unit Owner of such Unit has failed, for

more than 30 days after notice from the Association, to perform its responsibilities with respect to the maintenance, repair or replacement of its Unit, and (ii) such failure has a material effect on the appearance of such Unit when viewed from any area outside such Unit, or impairs the structural integrity or building systems of any portion of the Condominium, or has a materially adverse effect on the use of another Unit or Common Element; provided, however, that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs, maintenance or replacement if such Unit Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. All costs incurred by the Association in accordance with this Section 2.4.2(c) shall be charged as an Assessment against such Unit.

2.4.3. Alteration of Units.

a. Certain proposed alterations to a Unit require submission to and approval by the Executive Board or a person or committee appointed by and serving at the pleasure of the Executive Board (the "Committee", which term shall refer to the Executive Board or the committee or person appointed by the Executive Board, as applicable) pursuant to the following terms:

(1) Before anyone shall commence within the Condominium any construction, installation, remodeling or alteration that involves or includes: (i) adding or removing walls within the interior of a Unit, or (ii) penetrating from the interior of a Unit, a wall (except for hanging pictures and the like), ceiling, floor, roof, foundation, or other Common Element, the Unit Owner shall submit to the Committee, by hand delivery or certified mail, two sets of preliminary plans and specifications, which shall clearly show the nature of the work or installation proposed and the location thereof in the Unit, and which shall include sufficient description of materials and construction methods as to enable the Committee to evaluate whether the proposed construction, alteration, remodeling or installation will or could impair the structural stability of the Building or any mechanical, electrical or other system therein, lessen the support of or impair the structural integrity of any portion of the Condominium, adversely affect either the thermal or acoustical character of the Building, create or possibly create a safety, maintenance or Association expense issue, fail to be in harmony with or in accordance with the design, appearance or aesthetic character of the Condominium (to the extent such proposed alteration can be seen from outside of the Unit), or otherwise be in violation of the terms of the Condominium Documents, including any Rules and Regulations relating to approval criteria (together, the "Criteria").

(2) The Committee, in the due and proper exercise of its discretion, shall have the right and power to:

(i) charge a fee (or different fees depending on the nature of the proposed improvement) as determined by the Executive Board or as set forth

in the Rules and Regulations for review of plans and specifications, payment of which shall be a part of, and condition to, the submittal;

(ii) request from an applicant additional information and/or certification(s) from a licensed professional structural engineer or other professionals satisfactory to the Committee;

(iii) in reviewing the plans and specifications and/or construction, the Committee may hire or incur charges for engineers, lawyers and other personnel as it deems appropriate, all at the cost of the Unit Owner proposing the same;

(iv) request amended or final plans and specifications;

(v) require the Unit Owner to provide insurance, in an amount and with such provisions as shall be reasonably required by the Committee, insuring the Association and other Unit Owners against liability or loss arising from construction; and

(vi) disapprove plans or specifications if the Committee determines, in its discretion, that they are not in accord with any relevant provisions of the Condominium Documents, if the plans and specifications are incomplete, or if the Criteria are not satisfied.

(3) The Committee shall approve or disapprove within sixty (60) days after its receipt of plans and specifications. One set of plans and specifications, with the Committee's approval or disapproval and any requirements of the Committee, shall be returned to the applicant and the other copy thereof, corresponding to the first set, shall be retained in the Committee's files.

(4) The work must be completed in accordance with the approved plans and specifications. The provisions of Section 2.4.3(c) shall apply.

(5) The Committee shall have the power to provide a Unit Owner with an estoppel certificate as to improvements that comply with this Section 2.4.3(a) for a fee determined by the Executive Board or established in the Rules and Regulations.

(6) Neither the Committee, the Executive Board nor any member thereof shall be liable to the Association or to any Unit Owner or other person for any damage, loss or prejudice suffered or claimed on account of:

(i) The approval of any plans, drawings and specifications, whether or not defective;

(ii) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

(iii) The execution of an estoppel certificate whether or not the facts therein are correct; provided, however, the officer executing the certificate, with the actual knowledge possessed by him, has acted in good faith.

b. Except as provided in Section 2.4.3(a), regarding Committee approval, and except as may otherwise be specifically provided in the Condominium Documents, a Unit Owner or a tenant authorized by a Unit Owner may, subject to the terms and provisions of Section 2.4.3(c), construct an alteration or improvement to its Unit that:

(1) does not impair the structural stability of the Building or any mechanical, electrical or other system therein, lessen the support of or impair the structural integrity of any portion of the Condominium, or adversely affect either the thermal or acoustical character of the Building; and

(2) does not change the appearance of the Common Elements (including Limited Common Elements), the appearance of the exterior of a Unit (including the color of the outside of exterior doors) or the appearance of the structural or building components of a Patio or balcony, except as otherwise may specifically be allowed by the Condominium Documents.

c. Any person constructing an alteration or improvement permitted pursuant to Section 2.4.3(a) or (b) shall comply with the following provisions:

(1) The person will obtain or cause to be obtained any necessary permits and governmental authorizations for the alteration;

(2) The alteration and the construction thereof will comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(3) The person will cause the alteration to be constructed and completed diligently, in a good and workmanlike manner, and free and clear of all mechanics' and materialmens' liens and other claims;

(4) The person will minimize any effect from the construction process on other Units or Common Elements. Construction activities shall not unreasonably interfere with other Unit Owners' quiet enjoyment of their Units. The Rules and Regulations may address restrictions relating to construction activities that generate substantial noise, such as limiting the hours of the day in which such activities may take place.

(5) The person will indemnify and hold harmless the Association and other Unit Owners against liability or loss arising from construction of the alteration; and

(6) If the person conducting the alteration or improvement is not the Unit Owner, then the Unit Owner shall also be responsible for satisfying the provisions of this Section 2.4.3(c), and shall indemnify pursuant to Section 2.4.3(c)(5).

d. The Executive Board shall have the authority to adopt Rules and Regulations that address, as to portions of Units and Limited Common Elements visible from outdoors or outside of a Unit, appearance or aesthetic character, including uniformity of appearance. Until any contrary Rules and Regulations are promulgated relating to blinds or window coverings, a Unit Owner shall utilize and maintain window blinds of the manufacturer, type, quality and color that were originally approved by the Declarant, unless the prior written consent of the Executive Board is obtained.

Section 2.5. Voting Rights. Each Unit is entitled to one (1) vote in the Association. Provided, however, every Unit Owner entitled to vote at any election of members of the Executive Board may cumulate his votes and give any one or more candidates a number of votes equal to the number of votes to which the Unit Owner is entitled, multiplied by the number of Directors to be elected at that election. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of the beneficial interest of the fee of any Unit to a new Unit Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Voting may be by written proxy, subject to the limitations set forth in the Act and the Bylaws. For purposes of voting by Unit Owners, Declarant shall retain voting rights for any Units owned by Declarant.

Section 2.6. Development and Facilities.

2.6.1. Development. The construction of the Building, including its structural components and mechanical systems, has been completed. There is no further development of the Condominium planned by Declarant.

2.6.2. Amenities. The Condominium includes a courtyard and on-site parking as shown on the Plats and Plans.

2.6.3. Parking. Each Unit shall have the right to park at least one vehicle in the Condominium, either in a garage allocated to the Unit, if any, or in the on-site parking spaces. Each Unit Owner or tenant of a Unit Owner with a garage allocated to its Unit must use the garage for parking a vehicle, if any, of such Unit Owner or tenant. In no event shall a garage be converted to living space. The Executive Board, pursuant to Rules and Regulations or otherwise, may assign, reassign or remove an assignment of a particular parking space to a particular Unit. The Executive Board may promulgate Rules and Regulations relating to the use of the parking spaces.

2.6.4. No Right to Add Units. Declarant does not reserve the right to add Units to the Condominium nor to expand existing Units.

ARTICLE III
LIMITED COMMON ELEMENTS

Section 3.1. Limited Common Elements.

3.1.1. The following portions of the Buildings and Property are hereby designated as Limited Common Elements:

a. Those Limited Common Elements described as such in Sections 2.2(d)(2), 2.2(d)(4), 2.2(d)(5) and 2.2(d)(6) hereof.

b. Window and door sills, frames and hardware which are not part of the Unit but which are adjacent to and serve only such Unit.

c. Any Limited Common Elements so designated on the Plats and Plans.

ARTICLE IV
EASEMENTS

Section 4.1. Easements. In addition to and in supplementation of the easements provided for by Sections 47-7B-14, 47-7B-15 and 47-7B-16 and other provisions of the Act, the Condominium shall be subject to the following easements and restrictions:

4.1.1. Declarant's Easements.

a. Declarant may make such use of unsold Units and the Common Elements as may facilitate the sale of the unsold Units. Declarant shall have an easement to maintain a sales office, a management office and models in any Units owned by the Declarant and to maintain one or more advertising signs on the Common Elements as Declarant deems appropriate while the Declarant is selling any Unit(s) in the Condominium.

b. Declarant reserves an easement (until Declarant shall have fully completed and sold all of the Units) to use portions of the Common Elements and any Units owned by Declarant for construction, repair or renovation purposes, including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Property, following which the Declarant shall restore the affected property as closely to its original condition as practicable.

c. Declarant reserves an easement (until Declarant shall have satisfied all of its commitments pursuant to a purchase agreement with a Unit Owner and pursuant to law, if any, or, at Declarant's option, in connection with a claim made by a Unit Owner or the Association that construction of any portion of the Condominium or Building was deficient, for the Declarant, the Declarant's builder, and/or their contractors, without admitting liability, to enter onto and into the Common Elements and the Units at reasonable

times and in a reasonable manner, for inspection, evaluation, construction or repair purposes and the performance of work respecting the Property, following which the affected property shall be restored as closely to its original condition as practicable, except for any new construction work so performed.

4.1.2. Utility and Other Easements. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its commitments in favor of any Unit Owner and the Association and fully completed and sold all of the Units), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment, including security systems, as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace water mains and pipes, sewer and drain lines, telephone and other communication wires and equipment, television equipment and facilities (cable or otherwise), security systems, electrical wires, conduits and equipment, ducts and vents, and any other appropriate equipment and facilities over, under, through, in, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its occupants.

4.1.3. Easement for Ingress and Egress Through Common Elements, Access to Units, Parking and Support.

a. Subject to the provisions of Section 5.1.2(n) and any applicable Rules and Regulations, each Unit Owner, and the invitees, tenants and servants of each Unit Owner, are hereby granted an easement for ingress and egress through Common Elements to such Unit Owner's Unit and the Limited Common Elements that serve such Unit, to the Courtyard, and, subject to the provisions of Section 2.6.3 and any applicable Rules and Regulations, to the on-site outdoor parking spaces. The Common Elements are hereby burdened with and subjected to such easements by persons lawfully using or entitled to the same.

b. To the extent necessary, each Unit shall have an easement for structural support over every other Unit in the Building in which it is located and the Common Elements, and each Unit and the Common Elements shall be subject to an easement for structural support in favor of every other Unit in the Building in which it is located and the Common Elements.

4.1.4. Common Elements Easement in Favor of the Association. The Common Elements (including the Limited Common Elements) shall be and are hereby made subject to an easement in favor of the Association and the agents, employees and

independent contractors thereof for the purpose of the inspection, upkeep, maintenance, repair and replacement of such Common Elements.

4.1.5. Common Elements Easement in Favor of Unit Owners. The Common Elements shall be and are hereby made subject to the following easements in favor of the Units benefited:

a. For the installation, repair, maintenance, use, removal and/or replacement of pipes, ducts, heating and air conditioning systems, electrical, telephone or other communication wiring and cables and all other utility lines and conduits which are a part of or serve any Unit and which pass across or through a portion of the Common Elements.

b. For the installation, repair, maintenance, use, removal and/or replacement of lighting fixtures, electrical receptacles, panel boards and other electrical installations which are a part of or serve any Unit but which encroach into or are located in a part of a Common Element adjacent to such Unit; provided that the installation, repair, maintenance, use, removal or replacement of any such item does not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of a Building or impair or structurally weaken a Building.

c. For the maintenance and the encroachment of any lighting devices, outlets, medicine cabinets, exhaust fans, ventilation ducts, registers, grills, and similar fixtures which serve only one Unit but which encroach into any part of any Common Elements.

d. For driving and removing nails, screws, bolts and the like into the Unit-side surface of walls, ceilings and floors which are part of the Common Elements; provided that the action will not unreasonably interfere with the common use of any part of the Common Elements, adversely affect either the thermal or acoustical character of a Building or impair or structurally weaken a Building.

4.1.6 Units Easement in Favor of Association. The Units are hereby made subject to the following easements in favor of the Association and its agents, employees and independent contractors:

a. Easement for correction of emergency conditions in one or more Units or Common Elements, or casualties to the Common Elements or the Units;

b. Easement for reasonable right of inspection of the Units in order to verify the performance by Unit Owners of any maintenance or repair for which they are responsible; and

c. Easement for reasonable right of inspection, maintenance, repair and replacement of the Common Elements and all items for which the Association is responsible for maintenance or repair, which are situated in or accessible from such Units.

4.1.7. Easement Regarding Certain Encroachments. If any portion of any Unit or Common Element encroaches on any other Unit or Common Element, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Condominium or for any other reason, a valid easement for the encroachment and for the maintenance of the same will exist so long as the encroachment exists, so long as the physical boundaries of the Units will be in substantial accord with the description of those boundaries that appear in this Declaration and the Plats and Plans.

4.1.8. Easements Run With the Land. All easements, rights and restrictions as provided in this Declaration are easements appurtenant, running with the land, and, except as may be expressly otherwise provided herein, will continue in full force and effect until the termination of this Declaration.

4.1.9. Additional Easements. The Association shall have the right to grant permits, licenses and easements under, through or over the Common Elements (including Limited Common Elements) as may be reasonably necessary for the proper operation of the Condominium.

ARTICLE V USE RESTRICTIONS

Section 5.1. Permitted and Prohibited Uses Within the Condominium.

5.1.1. Permitted Uses Within the Condominium.

a. The Units (with the exception of any Units during the time period when they are being used by the Declarant as a sample, model or sales office) are restricted to single family residential use and may not be used for any other purposes by the Unit Owner or any future Unit Owner. Notwithstanding the foregoing, Units may also be used for accessory uses which are customarily incidental to the foregoing use, including a home office or room for home occupation; provided that any such accessory use conforms with the applicable zoning requirements of the City of Albuquerque, as the same may be amended from time to time, and so long as:

- (1) The existence or operation of any business activity is not apparent or detectable from outside the Unit;
- (2) No customers or clients are personally served at the Unit;
- (3) No persons other than residing family are employed; and
- (4) Any business activity is clearly incidental and secondary to the use of the Unit for a residence, is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium.

b. Declarant shall have all of the rights for sales purposes set out in Section 4.1.1 hereof.

5.1.2. Prohibited Uses Within the Condominium.

a. In no event shall any portion of the Condominium be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with this Declaration.

b. No use or practice will be permitted on the Property which interferes with the peaceful possession and residential use of the Property by its residents. Nothing shall be done or placed within the Condominium which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in the enjoyment of their Units. All parts of the Property will be kept in a clean and sanitary condition. No Unit Owner will permit any use of its Unit or of the Common Elements which will increase the rate of, or result in the cancellation of, insurance upon the Condominium or the Property. No sound shall be emitted on or within the Condominium which is unreasonably loud or annoying. No odor shall be emitted within the Condominium which is noxious or offensive to others. The floors of the Condominium, including the second story floors and the floors of the decks, shall not be overloaded. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction of the Property will be observed. The Rules and Regulations may address restrictions relating to any of these matters, including restrictions on activities that generate noise, and including limitations as to the hours of the day in which such activities may take place.

c. No garbage, rubbish, clippings from trees, shrubs or lawns, trash or other refuse may be thrown, dumped or allowed to accumulate on the Property except in the refuse containers located on the Property. There shall be no burning of refuse out of doors. No fireplace, wood stove or other device for the burning of materials indoors shall be constructed, installed or used by any person.

d. No light shall be emitted from or within the Condominium which is unreasonably bright or which causes unreasonable glare in any Unit or attached Limited Common Element. No Unit Owner shall display or add exterior lighting to a Unit or the Condominium, unless approved, in writing, by the Executive Board prior to installation, except that a Unit Owner may display holiday lighting in or upon the exterior of the Unit Owner's Unit if permitted by the Rules and Regulations, subject to any relevant limitations in the Rules and Regulations.

e. No exterior antenna or satellite dish of any sort shall be installed or maintained on any Unit or within the Condominium, except those devices which are approved by the Executive Board.

f. No use of the Patios or decks for storage and no use of the Patios or decks for placement of bicycles shall be permitted. No items shall be placed on a

Patio or deck wall or railing. Subject to the provisions of Section 2.4.1(c)(2) the space within the Patio or deck to a Unit shall be maintained by the Unit Owner in a neat, orderly fashion. Potted plants are permitted on Patios or decks, subject to any applicable Rules and Regulations, so long as they are well-maintained by the occupant, and so long as plants on a deck are secured or placed so that they cannot fall. The Executive Board shall have the right to adopt Rules and Regulations permitting, restricting or prohibiting grilling on Patios and/or decks, which may differentiate between the two.

g. The Rules and Regulations may restrict the number and types of animals that may be kept in a Unit and may otherwise regulate animals in the Condominium. Unless otherwise determined by the Executive Board or established in the Rules and Regulations, a limit of one pet in each Unit may be kept. Provided, however, that no pet may be kept in a Unit if it interferes with the peaceful possession of another occupant of the Condominium, or becomes a nuisance, disturbance or annoyance based on noise, odor, aggressiveness or otherwise. No livestock, insects or poultry of any kind shall be kept, raised, or bred in the Condominium. No animals may be kept, raised or bred for commercial purposes. A Unit Owner keeping a permitted pet shall follow all applicable laws and ordinances and fulfill all legal obligations relating to the pet, including obtaining all required governmental licenses, registrations and inoculations. A Unit Owner shall register its pet or pets with the Association. The Association may require initial and continuing proof that the pet satisfies licensing and other requirements of law. A household pet, if permitted, must be leashed or otherwise restrained when passing through the Common Elements of the Condominium and when in the Limited Common Elements, such as Patios. A Unit Owner of a Unit in which a pet is kept shall be responsible for cleaning up any solid waste of the pet on the Condominium grounds. The Executive Board may require a reasonable monthly assessment from a Unit Owner for the keeping of a pet if it determines that maintenance costs of Common Elements are increased thereby. Any pet causing or creating a nuisance, danger to humans, or unreasonable disturbance or noise shall be permanently removed from the Property upon seven (7) days written notice from the Executive Board. Any Unit Owner who keeps and maintains any pet upon any portion of the Condominium shall be deemed to have agreed to indemnify and hold the Association, each Unit Owner and the Declarant free and harmless for any loss, claim or liability of any kind of character whatever arising by reason of keeping or maintaining such pet within the Condominium. The Rules and Regulations may further address and restrict the keeping of pets in the Property.

h. The Executive Board may establish Rules and Regulations regulating or restricting the location, size and type of signs in the Condominium that can be seen by the public or another Unit Owner. The Executive Board shall have the power to determine a central location in the Condominium and a common format for Unit Owners to display "For Sale" or "For Rent" signs. Notwithstanding the above, the Declarant shall have the rights set forth in Section 4.1.1(a).

i. No clotheslines or drying of clothes shall be permitted on the Patios or decks or in the Common Elements.

j. No furniture or other items shall be placed in the Common Elements (except as permitted in garages, Patios or decks) unless specifically permitted pursuant to the Rules and Regulations or the Executive Board. No obstruction of the Common Elements shall be permitted.

k. No occupant of the Condominium shall leave in the Common Elements any trash or refuse created by their use. No occupant of the Condominium shall leave in the Common Elements any personal belongings (except as permitted in garages, Patios or decks).

l. NO PERSON SHALL CHANGE THE TOPOGRAPHY OR DRAINAGE OF THE PROPERTY OR TAKE ANY ACTION THAT WOULD CAUSE THE PROPERTY TO BE IN VIOLATION OF THE DRAINAGE PLAN FOR THE PROPERTY APPROVED BY THE CITY OF ALBUQUERQUE. ANY DRAINAGE WAYS SHALL REMAIN OPEN AND UNBLOCKED. ANY PROPOSED LAWN OR LANDSCAPING IN THE PATIO AREAS MUST BE FIRST APPROVED PURSUANT TO THE APPLICABLE PROVISIONS OF SECTION 2.4.1(c)(4). THE EXECUTIVE BOARD MAY ADOPT RULES AND REGULATIONS ADDRESSING OUTDOOR WATER USE.

m. No Unit Owner shall tie into the irrigation lines that serve the trees and foliage in the Patios or Common Elements.

n. In each Unit except for the three northern Units, there is a stairway to a panel located in the second story ceiling that provides access to the Building roof. Use of the stairs and access panel by a Unit Owner or its agents shall be under the control and regulation of the Executive Board and must be in accordance with applicable law. Until any Rules and Regulations are promulgated relating to such use, a Unit Owner or its agents may only use the stairs and access panel for incidental maintenance of heating and/or cooling apparatus for the Unit, which apparatus is located on the roof, or upon receiving prior written permission from the Executive Board for another proper purpose, as may be granted in the Executive Board's discretion. Any access to the Building roof by a Unit Owner or its agents shall be at their own risk. The Unit Owners, their agents, successors and assigns, for themselves and for anyone claiming by, through, or under them (together, the "Releasors"), hereby release, indemnify and hold harmless the Declarant, the Executive Board, the Association, the Managing Agent, the Condominium manager, any property manager leasing a Unit, and their employees, officers, directors, agents, successors and assigns (together, the "Released Parties"), from and against any and all claims, damages, causes of action, injuries and costs, including attorneys fees, which the Releasors may hereafter ever have or suffer in any manner related to or arising out any such roof access or use of access panel.

o. The Executive Board may promulgate Rules and Regulations relating to the operation of the Condominium, permitted or prohibited uses therein, and the matters addressed in Section 5.1.2, including, but not limited to, trash disposal, noise abatement, limitation on number of occupants and courtyard use.

ARTICLE VI MORTGAGES

Section 6.1. Application of Assessments to Mortgagees. The liens created upon any Unit under the Condominium Documents and/or the Act shall be subject and subordinate to, and shall not affect the rights of a mortgagee under any recorded first mortgage upon a Unit made in good faith and for value. Each such mortgagee who comes into possession of a Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such person comes into possession thereof.

Section 6.2. Limitation of Enforcement Against Mortgagee. No violation by a Unit Owner of the limitations, easements, restrictions, covenants and conditions set forth in any of the Condominium Documents or enforcement of the same against a Unit Owner shall defeat or render invalid the lien of any holder of a mortgage on a Unit made in good faith and for value against the property of such Unit Owner, but, the Condominium Documents shall be effective against any Unit Owner whose title is acquired by foreclosure, trustee's sale, voluntary conveyance, or otherwise.

Section 6.3. Application of Condominium Documents. Except as provided in this Article or specifically provided elsewhere in the Condominium Documents, all mortgages on a Unit and mortgagees thereof are bound by the provisions of the Condominium Documents.

Section 6.4. Qualified Mortgages.

a. When a Unit Owner delivers a Qualified Mortgage to the Qualified Mortgagee, the Unit Owner shall also provide executed or conformed copies to the Executive Board. Upon receipt of such copy of a Qualified Mortgage, the Secretary of the Association or such other person to whom the Executive Board delegates this duty, shall instruct the insurer of the Property to add the name of the Qualified Mortgagee to the mortgagee loss payable provision of the hazard insurance policy covering the Property and to provide such Qualified Mortgagee with a certificate of insurance showing that the Qualified Mortgagee's name has been so added.

b. The Association shall maintain a register of Qualified Mortgages, showing the names and addresses of the Qualified Mortgagees, the amount secured by each Qualified Mortgage, and whether it is a first mortgage.

Section 6.5. Notice To Qualified Mortgagees.

6.5.1. Upon the specific written request to the Executive Board by a holder, servicer, insurer or guarantor of a Qualified Mortgage on a Unit, it shall be entitled to receive notice of some or all of the following as designated in the request:

a. Any default of the owner of the Unit which is subject to the Qualified Mortgage, where such default is not cured by the Unit Owner within sixty (60) days after the giving of notice by the Association to the Unit Owner of the existence of the default;

b. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

c. Any condemnation or casualty loss that affects either a material part of the Condominium or the Unit securing the Qualified Mortgage;

d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as set forth in Section 6.6 below;

e. A change in the easement rights appertaining to Units; or

f. A change in the purposes to which any Unit or the Common Elements are restricted.

6.5.2. The request of a holder, servicer, insurer or guarantor of a Qualified Mortgage shall specify which of the above items it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Executive Board. The Executive Board need not inquire into the validity of any request made hereunder. However, the Executive Board may refuse to honor any request where, after reasonable inquiry, it shall determine that the person making such request is not entitled to the material so requested. The Executive Board may establish reasonable Rules and Regulations to implement this Section 6.5.

6.5.3. Failure to comply with the requirements set forth above shall in no way invalidate the otherwise proper actions of the Association and the Executive Board.

6.5.4. Notwithstanding anything herein that may be to the contrary, the Executive Board shall have the right, without incurring any liability to the Unit Owner, to notify a holder, servicer, insurer or guarantor of a Qualified Mortgage or any mortgage secured by a Unit of a default of the Unit Owner in the payment of Assessments or amounts owing to the Association or a breach of the Condominium Documents by the Unit Owner.

6.5.5. Any holder, servicer, insurer or guarantor of a Qualified Mortgage shall have the right to examine the books and records of the Association as provided in the Bylaws.

Section 6.6. Approval of Eligible Mortgagees. Subject to the limitations imposed by Section 47-7B-19 of the Act:

a. The approval of Eligible Mortgagees representing at least sixty-seven percent (67%) of the votes appertaining to Units subject to Eligible Mortgages shall be required to terminate the condominium status of the Property for reasons other than substantial destruction or condemnation of the Property.

b. The approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes appertaining to Units subject to Eligible Mortgages shall be required to terminate the condominium status of the Property after substantial destruction or condemnation of the Property.

c. The approval of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes appertaining to Units subject to Eligible Mortgages shall be required for any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard, where the restoration or repair will not substantially be in accordance with the Declaration and the Plats and Plans.

d. The agreement of Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgages shall be required to make an amendment of a material nature to the Condominium Documents. A change of the provisions of any Condominium Document establishing, governing or providing for any of the following shall for this purpose be considered material:

- (1) Voting rights;
- (2) Assessments, assessment liens or the priority or subordination of assessment liens;
- (3) Reserves for maintenance, repair and replacement of the Common Elements;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; or reallocation of Common Expense Liability pertaining to Units;
- (6) Boundaries of any Unit;
- (7) Convertibility of Units into Common Elements or of Common Elements into Units;
- (8) Expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium.
- (9) Insurance or fidelity requirements.

- (10) Leasing of Units.
- (11) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (12) Establishment of self-management when professional management had been required previously by an Eligible Mortgagee;
- (13) Restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents.
- (14) Any provision that expressly benefit holders, insurers or guarantors of first mortgages on Units.

As to any approval of Eligible Mortgagees required for amendments to any Condominium Document under this Section 6.6(d), the approval of an Eligible Mortgagee shall be implied and deemed given when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

ARTICLE VII LEASING AND RESALE OF UNITS

Section 7.1. Leasing Restrictions.

7.1.1. Subject to the provisions of the Condominium Documents, including Section 12.1 of this Declaration, a Unit Owner or tenant of a Unit Owner may lease or sublease its Unit at any time and from time to time provided that:

- a. No Unit may be leased or subleased without a written lease or sublease.
- b. The lease or sublease shall provide that a breach of this Declaration, the Bylaws or the Rules and Regulations shall constitute a breach of such lease or sublease.
- c. A copy of such lease or sublease, the contact information for the tenant, and such other information as may be requested shall be furnished to the Executive Board within ten (10) days after execution thereof.
- d. The Unit Owner shall comply with any Rules and Regulations relating to the leasing or subleasing of a Unit. Until any contrary Rules and Regulations are promulgated relating to the leasing or subleasing of a Unit, a Unit Owner will pay to the

Association the sum of \$100 as an administrative fee every time there is a new tenant or subtenant of the Unit Owner's Unit.

e. Whether or not a lease complies with the requirements of Section 7.1.2(b), the rights of any lessee or sublessee of the Unit shall be subject to, and each such lessee or sublessee shall be bound by, the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations, and a default thereunder shall constitute a default under the lease or sublease.

7.1.2. Subject to any applicable Rules and Regulations, a Unit Owner may allow a family member to occupy the Unit Owner's Unit in the Unit Owner's stead, without payment of rental, and without a written lease, from time to time provided that:

a. The contact information for the occupant and such other information as may be requested shall be furnished to the Executive Board within ten (10) days after occupancy.

b. The occupant shall be subject to and bound by the covenants, conditions and restrictions set forth in the Declaration, Bylaws and Rules and Regulations.

Section 7.2. Resale.

7.2.1. The right of a Unit Owner to sell or transfer his or her Unit shall not be subject to a right of first refusal or similar restriction in favor of the Association.

7.2.2. The provisions relating to resale of a Unit set forth in the Bylaws and Section 47-7D-9 of the Act shall be followed.

ARTICLE VIII

BUDGETS; COMMON EXPENSES; ASSESSMENTS; LIABILITY AND LIEN

Section 8.1. Budget. The preparation and ratification of the annual budget are addressed in the Bylaws.

Section 8.2. Assessments. The Executive Board shall levy and enforce the collection of Assessments from time to time. "Assessments" shall mean all assessments for all Common Expenses. Each Unit will be subject to Assessments for Common Expenses in accordance with the Percentage Interest appurtenant to the Unit, except as otherwise specifically provided in the Act, the Bylaws of the Association, or this Declaration, including Section 8.3 below. The Executive Board shall determine when Assessments shall commence, but Assessments shall commence no later than sixty (60) days after the conveyance of the first Unit to a person other than the Declarant. All annual Assessments shall be due and payable in equal periodic installments, in advance, on the first day or such other day of each month, quarter or such other period as determined by the Executive Board. Any Assessments for expenditures not included in the annual budget shall be due and payable as provided in the Bylaws. If an Assessment is payable in installments, the

full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due.

Section 8.3. Assessments Disproportionate to Percentage Interests.

8.3.1. Insurance Premiums. For every hazard insurance or liability insurance premium that is a Common Expense, the Executive Board may cause its insurer (or such insurer's agent) to provide a breakdown of the premium as to insurance rates applied in relation to each Unit. To the extent there is no material variation in insurance rates applied to any Unit, each Unit's pro rata share of the cost of such insurance shall be based upon the Unit's Percentage Interest. If there is a material variation in insurance rates applied in relation to any Unit, then each Unit's pro rata share of the cost of such insurance shall be determined equitably based upon the insurance rates applicable to such Unit.

8.3.2. Utilities Charges; Property Taxes. The Executive Board may obtain from the Bernalillo County Assessor a separate property tax assessment for each Unit and the Percentage Interest of the Common Elements appurtenant to each Unit. Currently, electricity is separately metered for each Unit. The Association shall have the right, but not the obligation, to have the water to the Units separately metered or submetered. Currently, there is one water meter for the Property. The Unit Owners will pay any separately assessed taxes or separately metered utilities to the appropriate authority or company or to the Association, as applicable. Any taxes or utility charges not separately assessed or billed will be prorated among the Unit Owners to be paid in accordance with their Percentage Interests; however, the Executive Board may alter the ratio of assessment of such taxes or utility charges if the Executive Board determines that a different allocation is fair and equitable, based on the actual value of the Unit in the case of property taxes, or based upon actual usage of utility services. The Association may bill for an estimated amount of water for a Unit, then read the water submeters periodically as determined by the Executive Board and reconcile such billings. Sewer charges relating to a Unit may be based upon Percentage Interests or other criteria as determined by the Executive Board.

8.3.3. Liability for Acts. Each Unit Owner shall be liable for the expense, including the expense of all maintenance, repair or replacement, rendered necessary by his act, neglect, carelessness or breach of the Condominium Documents, or the act, neglect, carelessness or breach of his tenants, guests, invitees or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board.

Section 8.4. Personal Liability and Lien.

8.4.1. Liability of Unit Owner, Lien. Assessments, together with interest thereon from the date due at the rate established from time to time by the Board and all collection or enforcement costs, including attorneys' fees, incurred by the Association, will constitute the personal liability of the Unit Owner so assessed (notwithstanding any lease

of the Unit Owner's Unit or occupancy of such Unit by another) and also will be a lien on the Unit against which they are assessed from the date due. Such lien will be subject to the provisions of Section 47-7C-16 of the Act and may be foreclosed by the Association in accordance with the laws of the State of New Mexico. If any Assessment remains unpaid for more than two months after it is first due, or such other time period determined by the Executive Board, then the Executive Board may treat such unpaid Assessment as a Common Expense to be assessed against all Units; provided, however, that if the Association subsequently collects all or any part of such unpaid Assessment, through foreclosure of its lien or otherwise, then any Unit Owner who has paid a portion of such unpaid Assessment as a Common Expense will be entitled to a credit (in an amount equal to its pro rata share of the amount of the unpaid Assessment subsequently collected by the Association) against any Assessments subsequently due from such Unit Owner. Nothing contained herein will prevent the Association from commencing any action to recover an Assessment from the person(s) liable therefor. The Association may assess interest, a late charge on such day as determined by the Executive Board for failure to timely pay each Assessment or other charge, and, as to each Assessment or other charge that remains unpaid, additional periodic late charges for such continuing failure to pay any such Assessment or other charge each month thereafter, or other period as determined by the Executive Board. Continuing late charges for each unpaid Assessment or charge may be assessed monthly even if Assessments are paid at a greater interval. In addition, the delinquent Owner will be obligated to pay any amounts paid by the Association for taxes or on account of superior liens or otherwise to protect the lien of the Association, which expenses and amounts, together with accrued interest, late charges, and attorney's fees, will be deemed to constitute part of the delinquent Assessment and lien and will be collectible as such.

8.4.2. The personal obligation for delinquent Assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

8.4.3. A lien for Assessments and charges shall not be affected by any sale or transfer of a Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for Assessments and charges which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit so sold or transferred from the lien of, any Assessments or charges thereafter becoming due.

Section 8.5. Subordination of Certain Charges. Any assessments, fees, charges, late charges, fines, interest and attorneys fees which may be levied by the Executive Board pursuant to Sections 47-7C-2 or 47-7C-15 of the Act, shall be subordinate to the lien of a first mortgage on a Unit.

ARTICLE IX
EXECUTIVE BOARD OF THE ASSOCIATION

Section 9.1. Powers of Executive Board. The Executive Board of the Association shall possess all of the duties and powers granted to the Executive Board by the Act. Except with respect to the approval or rejection of any matters specifically requiring a vote of the Association or Unit Owners under this Declaration, the Bylaws or the Act, and except for those matters with respect to which the Executive Board is prohibited from acting under this Declaration or the Act, the Executive Board may act in all instances on behalf of the Association.

Section 9.2. Composition of Executive Board. The Executive Board shall consist of the number of members provided for in the Bylaws, who shall be elected at annual meetings of Association members, except as otherwise provided in the Bylaws or Section 9.5 below. Each Executive Board member shall hold office pursuant to the provisions relating thereto in the Bylaws.

Section 9.3. Disputes.

a. In the event of any dispute or disagreement between any Unit Owners relating to the Property or the Condominium Documents, or in the event any question arises relating to the interpretation or application of the provisions of this Declaration (including the Plats and Plans), the Bylaws or the Rules and Regulations, the ultimate determination with respect thereto by the Executive Board shall be final and binding on each and all such Unit Owners. The Executive Board shall have the authority to seek a declaratory judgment or other appropriate judicial relief or order to assist it in carrying out its responsibilities under this Section. All costs of obtaining such a judgment shall be borne by the disputants, or in the absence of the disputants, by the Association as a Common Expense.

b. In the event of a complaint from an owner or occupant of property neighboring the Condominium relating to the conduct or act of a Unit Owner or occupant of the Condominium that would constitute a breach of the Condominium Documents, the Executive Board shall, if it deems appropriate, make an investigation or inquiry and may take such action as permitted by the Condominium Documents.

Section 9.4. Insurance. The Executive Board shall obtain and maintain insurance as provided in the Bylaws.

Section 9.5. Declarant Control. As provided in Subsections D and E of Section 47-7C-3 of the Act, and as provided in the Bylaws, Declarant reserves rights of Declarant Control of the Association, during which period the Declarant, or persons designated by him, may appoint and remove the officers and members of the Executive Board. The period of Declarant Control terminates upon the earlier of:

- a. One hundred twenty days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than Declarant;
- b. Two years after the Declarant has ceased to offer Units for sale in the ordinary course of business;
- c. Three years after the first Unit is conveyed to a Unit Owner other than Declarant; or
- d. Upon Declarant terminating the period of Declarant Control.

Section 9.6. Rules and Regulations. Reasonable Rules and Regulations, not in conflict with the provisions of the Act, this Declaration or the Bylaws, concerning the use and enjoyment of the Property, the Common Elements, or concerning other provisions of this Declaration or the Bylaws, may be promulgated from time to time by the Executive Board in order to clarify, define, regulate, carry out or effectuate any such provisions, whether or not such provisions specifically reference Rules and Regulations. Any matter that may be addressed in Rules and Regulations may be alternatively addressed by resolution of the Executive Board. Copies of the then current Rules and Regulations and any amendments thereto shall be furnished to all Unit Owners by the Executive Board promptly after the adoption of such Rules and Regulations or any amendments thereto.

Section 9.7. Managing Agent. The Executive Board may employ for the Condominium a Managing Agent as addressed in the Bylaws.

ARTICLE X CASUALTY

Section 10.1. Restoration of Common Elements. If all or any part of a Common Element is damaged or destroyed, then the Association will fully restore the damaged portions to their condition prior to such damage or destruction unless Unit Owners having at least eighty percent (80%) of the votes in the Association vote not to restore such Common Element (and such 80% vote must include the votes of any Unit Owner whose Unit will be substantially and adversely affected by the loss of such Common Element). If in accordance with the foregoing provisions any Common Element is not fully restored, the Association will perform a limited restoration as necessary to restore such Common Element to a safe condition and, to the extent feasible, to an appearance that does not adversely affect the use and enjoyment of the remaining Units and Common Elements or detract from the general character or appearance of the Condominium. To the extent not paid by insurance proceeds or by Unit Owners pursuant to Section 8.3.3, all costs of any restoration of the Common Elements will be Common Expenses. All proceeds of property insurance with respect to the Common Elements will be first applied to the full or limited restoration thereof as provided above, and then (i) if any insurance proceeds resulting from damage to a Common Element other than a Limited Common Element remain after such full or limited restoration, such proceeds shall be paid to the Unit Owners according to their Percentage Interests, and (ii) if any insurance proceeds resulting from damage to a Limited

Common Element remain after such full or limited restoration, such proceeds shall be paid to the Unit Owners of the Units to which such Limited Common Element is allocated.

Section 10.2. Restoration of Units. If all or any part of a Unit is damaged or destroyed, then the Unit Owner of such Unit shall return its Unit to a safe condition and restore the appearance of the Unit so that it does not adversely affect the use and enjoyment of the Units and Common Elements or detract from the general character or appearance of the Condominium. The Unit Owner will be solely responsible for the performance of such restoration, other than the restoration of any Common Elements within such Unit (which will be performed by the Association pursuant to Section 10.1). Except as provided in Section 8.3.3, the costs of such restoration to be performed by such Unit Owner will be borne solely by such Unit Owner. The provisions of Section 2.4.3 shall apply to a Unit Owner's restoration of its Unit.

Section 10.3. Coordination. The Association will have full authority and responsibility to coordinate the manner of completion and scheduling of any restoration under this Article X (other than one that only involves one Unit and no Common Element) so as to ensure the completion of the restoration in an efficient manner. Each Unit Owner will cooperate and cause its contractors and agents to cooperate in the Association's coordination of any such restoration.

Section 10.4. No Abatement. Each Unit will continue to be subject to Assessments following any damage to any portion of the Condominium.

ARTICLE XI EMINENT DOMAIN

Section 11.1. Supplementation to the Act. In the event of a taking of all or any part of the Condominium by eminent domain, the rights of the Unit Owners will be governed by Section 47-7A-7 of the Act, with the following modifications and additions:

a. If any Common Element is acquired, the Association will restore any remaining Common Elements to a safe condition and, to the extent feasible, to an appearance that does not adversely affect the use and enjoyment of the remaining Units and Common Elements or detract from the general character and appearance of the Condominium.

b. Each Unit Owner of a partially-acquired Unit will be responsible for the restoration of its Unit as necessary to return the Unit to a safe condition and, to the extent feasible, to an appearance that does not adversely affect the use and enjoyment of the other Units and Common Elements or detract from the general character or appearance of the Condominium. The plans and specifications for such limited restoration will be subject to approval by Unit Owners to whom at least eighty percent (80%) of the votes in the Association are allocated. Unit Owners may not unreasonably withhold their approval of such a limited restoration. The limited restoration must be completed in

accordance with the approved plans and specifications and the provisions of Section 2.4.3, including 2.4.3(c).

c. In connection with any Common Element, the Board will be solely responsible for negotiating and is hereby authorized to and is appointed as attorney-in-fact to negotiate with the condemning authority on behalf of all Unit Owners concerning the amount of the award. The acceptance of an award by the Board will be binding on all Unit Owners. Each Unit Owner will be responsible for negotiating with the condemning authority concerning the award for the taking of its Unit or any portion thereof.

d. The net award (i.e., net of all costs of collection and all costs of restoration pursuant to Section 11.1(a)) with respect to any Common Element will be paid to the Association for the use and benefit of the Unit Owners and their mortgagees as their interests may appear.

Section 11.2 Transfers in Lieu of Condemnation; Separate Claims. The provisions of this Article XI will apply to acquisition of a Unit or Common Element by exercise of the power of eminent domain or to any conveyance in lieu of the exercise of such power. Nothing contained herein will prevent any Unit Owner from prosecuting its own claim by separate proceedings for damage to such Unit Owner's business, for moving expenses, and for the costs of any restoration required to be performed by such Unit Owner under Section 11.1(b).

ARTICLE XII ENFORCEMENT; AMENDMENT; TERMINATION

Section 12.1. Enforcement. In addition to the other rights and provisions set forth in the Condominium Documents, including, but not limited to, Sections 2.4.2(c), 6.5.4, 8.3.3, 8.4 and 9.3 of this Declaration, the following provisions shall apply:

a. Each Unit Owner shall be responsible for assuring the compliance by such Unit Owner's family members, guests, invitees, licensees, tenants and subtenants with the Condominium Documents. Any violation by such persons will be deemed to be and shall constitute a violation by the Unit Owner.

b. Any breach of a Condominium Document by a lessee of a Unit shall be deemed to be and shall constitute a breach of the Unit lease by the lessee. Each Unit Owner that leases the Unit Owner's Unit to one or more tenants hereby irrevocably appoints the Executive Board, and the Managing Agent if one is employed, as the Unit Owner's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, the Executive Board or Managing Agent may, without the obligation to do so, in the Unit Owner's name, take any necessary or appropriate action upon one or more breaches of the Condominium Documents by the tenant or tenants, to send a notice or notices to the tenant(s), to terminate the lease and/or remove the tenant(s) pursuant to applicable provisions of law, including the New Mexico Owner-Resident Relations Act, at the Unit Owner's expense and without incurring any liability to the Unit Owner.

c. In addition to the other remedies and to Assessments made by the Executive Board, the Executive Board shall have the right to assess a fine or fines, in amounts determined by the Executive Board, against a Unit Owner for each violation of the Condominium Documents (except for late payment of Assessments, covered by late charges and interest). Prior to the levy of a fine, the Executive Board shall hold a hearing relating to the violation or violations upon at least twenty (20) days notice to the Unit Owner to be fined. Such Unit Owner shall be given an opportunity to be heard at such hearing. Any fine shall be due and payable to the Association when levied, or in such installments as the Executive Board shall designate. The Executive Board shall have the authority to levy further fines for a continuing violation of the Condominium Documents at such periods, monthly or otherwise, as the Executive Board may determine, and no further hearing for fines relating to a continuing violation shall be necessary. The requirement for a hearing does not apply to Association action or Unit Owner liability pursuant to Sections 2.4.2(c), 8.3.3 or 8.4 or any other provision of the Declaration or Bylaws, except as may be otherwise specifically determined by the Executive Board. The Executive Board may promulgate Rules and Regulations relating to fines.

d. All Assessments, late charges, fines, interest and other amounts charged to a Unit Owner, plus all costs and amounts, including attorneys fees, incurred by the Executive Board or Association due to a breach of the Condominium Documents, shall constitute the personal liability of the Unit Owner (and, if the Unit is owned by more than one person, such liability shall be joint and several) and a lien on and Assessment against the Unit Owner's Unit, subject to the provisions of Section 8.4.

e. The violation or breach by any Unit Owner of any provision contained in this Declaration, the Bylaws, the Rules and Regulations, or the Act, or the failure to comply with decisions of the Association made pursuant to authority granted to the Association in such documents, shall give the Executive Board and any aggrieved Unit Owner the right, in addition to any other rights to which it may be entitled, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. Unit Owners are granted similar rights of action against the Association for such a breach by the Association.

f. Each remedy provided for in the Condominium Documents, the Act, or by law is cumulative and not exclusive.

g. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of the Condominium Documents shall not constitute a waiver of any right to enforce any such provision or any other provision of the Condominium Documents.

Section 12.2. Amendments.

12.2.1. Amendment to Declaration. This Declaration may be amended only in accordance with the procedures specified in Section 47-7B-17 of the Act, the other Sections of the Act referred to in Section 47-7B-17, and the express provisions of

this Declaration. Except as otherwise provided in this Declaration or the Act, the provisions of this Declaration may be amended only by the agreement or vote of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that if such amendment shall make any change which would have a material effect upon any of the rights, privileges, powers and options of the Declarant, such amendment shall require the joinder of the Declarant.

12.2.2. Corrective Amendment to the Condominium Documents.

Notwithstanding any other provisions of the Condominium Documents to the contrary, if any amendment is necessary in the judgment of the Executive Board to cure any ambiguity or to correct or supplement any provisions of the Condominium Documents that are defective, missing or inconsistent with any other provisions thereof or with the Act, or if the amendment is necessary to conform to the requirements of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with respect to Condominium projects, then at any time and from time to time the Executive Board may effect an appropriate corrective amendment without the approval of the Unit Owners or the holders of any liens on all or any part of the Property, upon receipt by the Executive Board of an opinion from independent legal counsel to the effect that the proposed amendment is permitted by the terms of this sentence. Each amendment of the type described in this Section shall be effective upon the recording of an appropriate instrument setting forth the amendment and its due adoption, which instrument has been executed and acknowledged by one or more officers of the Executive Board.

Section 12.3. Termination. The Condominium may be terminated in the manner provided in the Act, only by agreement of Unit Owners of Units to which at least eighty percent of the votes in the Association are allocated and the agreement of Eligible Mortgagees as set forth in Section 6.6 hereof.

Section 12.4. Limitation on Indemnifications. To the extent, if at all, that Section 56-7-1, NMSA 1978, as amended in 2003, is applicable to this Declaration, any agreement to indemnify, hold harmless, insure or defend another party contained herein shall not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents.

Dated: June 30, 2006

Declarant:

Mulberry Gardens, LLC, a
New Mexico limited liability company

By: Sean Gilligan

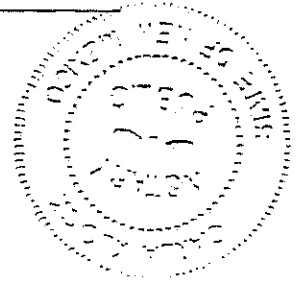
Sean Gilligan, Member

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was duly acknowledged before me on the 30th day of June 2006, Sean Gilligan, Member of Mulberry Gardens, LLC, a New Mexico limited liability company.

Carla Slack
Notary Public

My commission expires: March 31, 2009



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