

**DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BELL TRADING POST LOFTS CONDOMINIUM**

This DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the Effective Date (as defined below) by FAMILY HOUSING DEVELOPMENT CORPORATION, a New Mexico nonprofit corporation (the "Declarant").

RECITALS

A. Declarant is the owner of certain real estate in Bernalillo County, New Mexico, which real estate is more particularly described in Exhibit A attached to and incorporated by reference in this Declaration.

B. In order to establish mutually beneficial restrictions under a general plan for the improvement and development of the Property, Declarant desires to subject the Property to the conditions, covenants and restrictions set forth herein, upon and subject to which the Property is to be held, improved and conveyed.

C. The purpose of this Declaration is to (1) provide a method for proper development of the Property; (2) provide for an association of Unit Owners and outline its powers, duties and management; and (3) provide in general for the quality development of the Property in accordance with the general plan set forth herein.

NOW, THEREFORE, Declarant hereby (1) submits the Property, together with all buildings, improvements and appurtenances thereon, to the applicable provisions of the New Mexico Condominium Act (defined below as the "Act"), hereby creating a condominium regime named "Bell Trading Post Lofts Condominium," as set forth herein, and (2) declares that all of the Properties described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the properties submitted to this Declaration and which shall be binding on all parties having any right, title, or interest in the Properties or any part thereof, by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, and their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Unit Owner thereof.

ARTICLE I DEFINITIONS

"Act" means the New Mexico Condominium Act, contained in Sections 47-7A-1 to 47-7D-20 NMSA 1978, as may be amended and supplemented from time to time.

"Allocated Interest" means, as to each Unit, the undivided interest in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Unit more particularly provided for in Article VIII and as shown in Exhibit C; unless otherwise provided in such Exhibit, the Allocated Interest of a Unit shall equal the number of square feet of floor space within a Unit divided by the total combined square footage of all of the Units.

"Annual Assessment" means those Assessments levied annually by the Board of Directors for the purposes and in accordance with the provisions of Article IX of this Declaration.

"Articles" means the Articles of Incorporation of the Association, a copy of which is to be filed in substantially the form attached as Exhibit D, and as may be amended and supplemented from time to time.

"Assessments" means Annual Assessments, Special Assessments, Capital Improvements Assessments and Reconstruction Assessments authorized, imposed and administered as provided in this Declaration, including in particular Article IX, and by any Subsequent Amendment.

"Association" means and refer to Bell Lofts Unit Owners Association, Inc., a New Mexico nonprofit corporation formed or to be formed, its successors and assigns, in which all Unit Owners shall have a membership interest.

"Board" or "Board of Directors" means the Board of Directors of the Association, which shall be the elected body having its normal meaning under New Mexico nonprofit corporation law.

"Bylaws" means the Bylaws of the Association, a copy of which is attached as Exhibit E, to be adopted substantially in that form and as may be amended and supplemented from time to time.

"Capital Improvement Assessment" has the meaning given to such term in Section 9.08.

"Commercial Units" means one or more Units designated and reserved for business office use, as shown and designated on the Condominium Plat or any amendment thereof.

"Common Element" or "Common Elements" means all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Unit Owners, as further described in Section 3.01. Except as otherwise expressly set forth in this Declaration, the Common Elements shall consist of all portions of the Project outside of the Units. The

initial Common Elements to be owned by the Association shall be conveyed to the Association prior to the conveyance of any Units to any Unit purchaser after recording of this Declaration.

"Common Expenses" means and includes (a) the expenses of, and any reasonable reserves for, the maintenance, management, operation, repair and replacement of the Common Elements and all other areas whether within or without the boundaries of a Unit which the Association is responsible to maintain, repair and replace; (b) the cost of capital improvements to the Property which the Association may from time to time authorize; (c) the expenses of management and administration of the Association, including without limitation, compensation paid by the Association to a manager and to accountants, attorneys and other employees or agents; (d) any other item or items designated by or in accordance with other provisions of this Declaration or the Bylaws to be Common Expenses; and (e) any other expenses reasonably incurred by the Association on behalf of all Unit Owners.

"Condominium Building" means and refers to any and all buildings (including all fixtures and improvements therein contained) located on the Property and within which one or more Units are located.

"Condominium Documents" means the Articles, Bylaws, this Declaration, Rules and Regulations if, as and when adopted, and any amendments to the foregoing.

"Condominium Plat" means the development plan, and any diagrams and engineering drawings and related materials, as amended from time to time, showing the Condominium Building(s), the diagrammatic floor plans of the Units, the boundaries of the Units, the Common Elements (including Limited Common Elements) and, where applicable, dimensions, specific alternative uses as authorized by this Declaration, and such other information reasonably necessary to identify a Unit, as provided in Section 47-7B-9 of the Act. A copy of the Condominium Plat for the Project is attached hereto as Exhibit B.

"Declarant Control Period" means that period of time during which the Declarant (or any Successor Declarant) may appoint and remove the directors and officers of the Association. The Declarant Control Period shall commence at the Effective Date and shall end not later than (i) one hundred twenty (120) days after the date as of which seventy-five percent (75%) of the Units have been conveyed to Unit Owners other than Declarant; (ii) two (2) years after any Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) five years after the last exercise (if any) of the right to add new units pursuant to Article XVI of this Declaration; whichever of the foregoing occurs first.

"Development Rights" means any right, if expressly reserved by the Declarant in this Declaration to: (a) add real property or improvements to the Condominium; (b) create Units, Common Elements, or Limited Common Elements within real property included or added to the Condominium; (c) subdivide Units or convert Units into Common Elements; (d) withdraw real property from the Condominium; or (e) reallocate limited common elements with respect to Units that have not been conveyed by the Declarant.

"Effective Date" means the date on which this Declaration is recorded in the real estate records of the County Clerk of Bernalillo County, New Mexico.

"Eligible Mortgagee" means a Mortgagee of a Unit or the Mortgagee of the Project that has filed with the secretary of the Association a written request that it be given copies of notices of any action by the Association that requires the consent of Mortgagees.

"Fiscal Year" means the fiscal year of the Association for accounting purposes.

"Improvements" means all structures and appurtenances thereto of every type and kind, including but not limited to the Condominium Building, walkways, sprinkler systems, pipes, roads, driveways, parking areas, carports, fences, the exterior surfaces of any visible structures, planted trees and shrubs, poles, signs, heating and air conditioning equipment, water softener fixtures, and any office equipment affixed to the Property.

"Interior Surfaces" (when used in defining the boundaries of Units or Limited Common Elements) shall not include paint, wallpaper, paneling, carpeting, tiles, finished flooring, and other such decorative or finished surface coverings. Such decorative and finished coverings, along with fixtures and other tangible personal property (including furniture, planters, mirrors, and the like) located in and used in connection with a Unit or Limited Common Element, shall be deemed a part of the Unit or Limited Common Element.

"Limited Common Elements" means and includes those Common Elements which are associated with a particular Unit or Units to the exclusion of other Units, as described in the Condominium Act and in this Declaration, all as designated in the Condominium Plat.

"Maintenance Fund(s)" has the meaning assigned to such term in Section 9.02.

"Managing Agent" means the person or entity employed by the Association or the Board of Directors pursuant to Section 11.02.

"Member" means a person or entity entitled to membership in the Association, as provided herein.

"Mortgage" means the recorded transfer or conveyance of any Unit to secure the payment of a debt, and shall include a deed of trust.

"Mortgagee" means a person or entity to whom a Mortgage upon a Unit, and includes a beneficiary or holder of a deed of trust.

"Mortgagor" includes a mortgagor under a Mortgage, as well as the grantor of a deed of trust which constitutes a Mortgage hereunder.

"Operating Fund" has the meaning assigned to such term in Section 9.02.

"Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

"Project" means Bell Trading Post Lofts Condominium, as it includes the Property, the Improvements and any other properties, assets and related rights owned by the Association and utilized in the operation of the foregoing, all as further described in the Condominium Plat.

"Property" or "Properties" means the real property described in Exhibit "A" attached hereto and further refers to any additional property as may hereafter be annexed by Subsequent Amendment to this Declaration or which is owned by the Association.

"Quorum" means attendance, in person or by proxy, at an Association meeting or Board meeting of that percentage of the Members or Directors, respectively, as may be specified in the Bylaws.

"Reconstruction Assessment" shall have the meaning given to such term in Section 11.06.

"Reserve Fund" has the meaning assigned to such term in Section 9.02.

"Restrictions" means the conditions, limitations and restrictions on the use and occupancy of the Units and the Common Elements imposed by the Condominium Documents.

"Special Assessment" means any Assessment for Special Expenses.

"Special Declarant Rights" means the special rights reserved in Section 16.01 of this Declaration.

"Special Expenses" means (a) the expenses incurred by the Association for the repair of damage or loss to the Common Elements or the property of Unit Owners of Units caused by the act or neglect of a Unit Owner which is not paid by insurance; and (b) any other item or items designated by or in accordance with other provisions of this Declaration, including Section 11.04, or the Bylaws to be a Special Expense.

"Special Quorum" means attendance, in person or by proxy, at an Association meeting or Board meeting of that percentage of the Members or Directors, respectively, larger than that required for a Quorum, as may be specified in the Bylaws.

"Subsequent Amendment" means an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose expressly or by reference additional restrictions and obligations on the land submitted by that Amendment to the provisions of this declaration.

"Unit" means each of those portions of the Condominium intended and designated for separate ownership by the Unit Owners or by a lessee of a Unit Owner or by Declarant. Each Unit shall be a separate fee simple estate, as separately shown, numbered and designated, and shall have boundaries and a total area as set forth, in the Condominium Plat.

"Unit Owner" means one or more persons or entities who hold the record title to any Unit, but excluding in all cases any party who is holding an interest merely as security for the performance of an obligation or is a lessee or tenant of a Unit Owner. If a Unit is sold under a recorded real estate contract, the contract purchaser will be considered the Unit Owner. Unless the context requires otherwise, the Declarant is a Unit Owner.

Other terms not otherwise defined shall have the meanings specified in the Act.

Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE II DESCRIPTION, BOUNDARIES OF UNITS; DEVELOPMENT

Section 2.01 Description of Units. The Condominium Plat sets forth the description of each of the Units, including the following:

- (a) the number of Units, and the identifying number of each Unit, which Declarant has created and reserves the right to create;
- (b) the approximate square footage, number of bathrooms, whole or partial, number of rooms designated primarily as bedrooms, number of built-in fireplaces, the level or levels on which each Unit is located, and
- (c) the direct access of Units to Common Area stairways, lobbies, walls, parking areas and/or driveways.

Section 2.02 Unit Boundaries. The Interior Surfaces of perimeter walls, floors, and ceilings are the boundaries of a Unit. Decorative and finished surface coverings (including paint, wallpaper, paneling, carpeting, tiles, and finish flooring) are a part of the Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements. Subject to the provisions of Section 3.01, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Section 2.03 Physical Boundaries. The physical boundaries of a Unit constructed substantially in accordance with the original Condominium Plat and any other plans thereof become its boundaries rather than any metes and bounds description in the Condominium Plat, regardless of settling or lateral movements of the Condominium Building or minor variances between boundaries shown on the Condominium Plat and plans and those of the Building. This Section does not relieve a Declarant or any other person of liability for failure to adhere to the Condominium Plat and plans.

Section 2.04 Relocation of Boundaries; Adjoining Units. Subject to the provisions of the Declaration and other provisions of law, the boundaries between adjoining Units may be relocated only by an amendment to the Declaration upon application, by the Owner or Owners

of those Units, to the Declarant or, after the Association is formed, the Association. If the Owner(s) of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Unless the Declarant or Board (as the case may be) determines within thirty days that the reallocations are unreasonable or not otherwise in accord with the Declaration, the Association shall prepare an amendment that identifies the Units involved, states the reallocations, is executed by the Unit Owner(s), contains words or conveyance between them, and is duly recorded in the Bernalillo County, New Mexico real property records, indexed in the name of the grantor and the grantee. The Declarant or Association shall prepare and record an amended Condominium Plat necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers.

ARTICLE III COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 3.01 Description of Common Elements and Limited Common Elements.

All portions of the Project other than the Units are Common Elements, except as otherwise expressly set forth in this Declaration. Except as specifically provided otherwise: (a) any portion of a chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column or any other fixture which lies partially within and partially outside the designated boundaries of a Unit and serves more than one Unit or any portion of the Common Elements is a part of the Common Elements, and (b) any portion of any of such fixtures serving one or more but less than all Units is a Limited Common Element allocated exclusively to such Unit or Units. Any shutters, awnings, window boxes, doorsteps, stoops, porches, enclosed yards or patios, and all roof areas covering all or a portion of same, designed to serve one or more but less than all Units, but located outside the boundaries of the Unit, are Limited Common Element allocated exclusively to the Unit or Units which they serve. The Common Elements and Limited Common Elements include in particular the following:

1. Patios adjacent to the Units, as shown and designated on the Condominium Plat.
2. Parking spaces as shown and designated on the Condominium Plat, are Common Elements. Allocation and designation of parking spaces is further described in Sections 6.09 and 16.02.
3. Each HVAC unit and the associated ductwork serving a Unit are a part of that Unit, except for HVAC units serving Units D-109 and D-110 (mounted above Units D-201 and D-202 respectively) which, along with the associated supply plenums and ductwork, are Limited Common Elements. Exposed trusses and other ductwork and conduits within Units are Common Elements; the Association reserves an exclusive easement to maintain, repair and replace such trusses and other items.
4. The elevated portion of the Building in the front along Central Avenue, known as the "Bell Tower" is a Common Element with access limited to the Association for maintenance and repair purposes.

5. The corridor located between Units D110 and D112 is a Limited Common Element to provide access for Units D112, D113 and D114 between the main corridor and the Limited Common Element between "L.C.E. D110" and "L.C.E. D112" as shown on the Condominium Plat; both of such Limited Common Elements are reserved for the use and benefit of those Units.

The Common Elements and Limited Common Elements shall only be used for the purposes for which they were intended in the furnishing of services and facilities for the enjoyment of the Units, including Units to which Limited Common Elements are allocated.

Section 3.02 Designation of Limited Common Elements. The Declarant or, after the Declarant has relinquished control to the Association under Section 8.01, the Association shall have the power in its discretion to (a) designate from time to time certain Common Elements as Limited Common Elements, (b) grant reserved rights as to Limited Common Elements to any one or more of the Unit Owners and (c) establish a reasonable charge included in the Annual Assessments to such Unit Owners for specific costs incurred by the Association for the maintenance of such Limited Common Elements. Such designation by the Association shall not be construed as a sale or disposition of the Common Elements. The initial designation of Common Elements as Limited Common Elements shall be as set forth in the Condominium Plat; subsequent designations shall be effected by amendment to the Condominium Plat.

Section 3.03 Rights to Common Elements. Every Unit Owner shall have a nonexclusive easement of use and enjoyment in and to the Common Elements, subject to any restrictions or limitations contained in this Declaration or in any Deed or amendment to this Declaration conveying to the Association or subjecting to this Declaration such property. Any Unit Owner may delegate its right of enjoyment to its tenants, employees, agents and business invitees, subject to Section 6.08 and to reasonable regulation by the Board. Such easements shall be appurtenant to and shall pass with title to every Unit in the Project.

Section 3.04 Allocated Interest. The Allocated Interest of each Unit (that is, the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association allocated to each Unit) are set forth in Exhibit C attached hereto. The percentages assigned to the Allocated Interests do not necessarily reflect the amount for which a Unit may be sold from time to time by Declarant or others. The Allocated Interest assigned to each Unit cannot be changed except as provided in this Declaration. The Allocated Interest and the title to the respective Units shall not be separated or separately conveyed and each undivided interest shall be deemed to be conveyed with its respective Unit regardless whether the description in the instrument of conveyance or encumbrance refers to the Allocated Interest. Except where permitted by the Act, the Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an Allocated Interest made without the Unit to which that Allocated Interest relates is void.

ARTICLE IV EASEMENTS

Section 4.01 Association Easement. The Association shall have an easement over the Common Elements to perform its duties in the management and administration of the Project as described in this Declaration. The Association's obligations to maintain the Common Elements shall commence at the time provided in Section 8.01. Until that time, the Common Elements shall be maintained by Declarant.

Section 4.02 General Easements of Units. In addition to rights under the Act, each Unit has an easement in and through each other Unit and the Common and Limited Common Elements for all support elements and utility, wiring, heat, plumbing, ventilation, air conditioning and service elements, and for reasonable access thereto, as required to effectuate and continue proper operation of the Condominium. Without limiting the generality of the foregoing, each Unit and all Common and Limited Common Elements are specifically subject to an easement for the benefit of each of the other Units in the Condominium for all duct work for the several Units, for fireplaces and associated flues or chimneys, and as required for the intercom, security and electrical entry system, if any. Finally, each Unit as it is constructed is granted an easement to which each other Unit and all Common and Limited Common Element is subject to the location and maintenance of all the original equipment and facilities and utilities for such Unit. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for Common Elements reserved by law. Each Unit Owner has a general right and easement for ingress and egress to and from his or her respective Unit.

Section 4.03 Partition; Boundaries. Except as expressly provided in this Declaration and permitted under the Act, there shall be no judicial partition of the Common Elements, or any part thereof, for the term the Project, nor shall Declarant, any Unit Owner or any other person acquiring any interest in any Unit in the Project seek any such judicial partition. The boundaries of a Unit shall not be altered except as approved in writing by Declarant at or before the time of sale of a Unit from Declarant to a Unit Owner, all in compliance with this Declaration.

Section 4.04 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Elements adjacent thereto or as between adjacent Units due to (i) settling of a Condominium Building, or (ii) alteration or repair to the Common Elements, (iii) repair or restoration of one or more Condominium Buildings and/or Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings (in accordance with the terms of these restrictions), or (iv) engineering errors, or errors in original construction, reconstruction, repair of any portion of the Condominium Building, or any other similar cause, and any encroachment due to building overhang or projection. In no event, however, shall an easement for encroachment exist if such encroachment occurred due to willful conduct with full knowledge on the part of a Unit Owner, tenant, or the Association.

Section 4.05 Easements for Utilities. The Board, on behalf of the Association and all members thereof, shall have authority to grant utility and similar easements, licenses and permits under, through or over the Common Elements, provided the Board determines such easements are reasonably necessary to the ongoing development and operation of the Property.

Section 4.06 Easement for Parking. Subject to the provisions of this Declaration, Declarant hereby grants and designates to the Unit Owners and the employees, agents, business invitees and guests of each Unit Owner, for the joint use and benefit of all Unit Owners and their invitees and guests, an easement for access to parking and for parking over, across and on the parking areas, as further described in Section 16.02. The easement shall be appurtenant to, run with and shall pass with the title to each Unit. In addition, the Unit Owners of Units D112, D113 and D114 are granted an easement over, across and on those areas shown on the Condominium Plat for access to the offsite parking garage located on 'Lot 2A, West End Addition' as shown on the Condominium Plat. Parking by employees, agents, business invitees and guests of a Unit Owner of a Commercial Unit may be limited to spaces designated for that Commercial Unit, if and to the extent shown in the Condominium Plat.

Section 4.07 Restrictions on Members' Easements. The easements of use and enjoyment of the Common Elements created by this Declaration shall be subject to the Restrictions, which include without limitation, the following:

(a) the right of the Board to suspend the voting rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreational and other facilities located on the Common Elements, for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment against the Member and his Unit remains delinquent, and, after Notice and Hearing as provided in the Bylaws, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions;

(b) the right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Elements and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Elements for the benefit of the Members of the Association;

(c) the right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Elements for purposes not inconsistent with the intended use of the Property as a residential and commercial condominium project;

(d) the rights and reservations of Declarant as set forth in this Declaration;

(e) the right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance areas and other areas of the Property, except for the roof Limited Common Elements;

(f) the right of the Association to reasonably limit the number of guests, employees, patrons and other invitees of Unit Owners using the Common Elements including the parking areas located thereon;

(g) the right of the Association, acting through the Board, to establish uniform Rules and Regulations pertaining to the use of the Common Elements including, but not limited to, the right and obligation of the Association to establish parking areas for patrons, business invitees and employees and to enforce all parking restrictions within the Common Elements, subject to the rights of any parking areas designated as Limited Common Areas; and

(h) subject to the provisions of this Declaration, the right of each Unit Owner to the exclusive use and occupancy for the purposes designated in this Declaration of the Limited Common Element assigned to his respective Unit.

Section 4.08 Easements Regarding Construction and Sale. Notwithstanding any contrary provisions contained in this Declaration, so long as construction and initial sale of Units shall continue, Declarant may maintain and carry on upon portions of the Common Elements such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction, marketing and sale of such Units, including, but not limited to, areas and containers for construction materials and equipment, business offices, signs, model Units, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use buildings owned by the Declarant as models and sales offices. This Section may not be amended or deleted without the express written consent of the Declarant.

Section 4.09 Other Declarant Easements. Declarant expressly reserves for itself, its agents and employees an easement over, upon and through the Common Elements and Limited Common Elements, and the right of access to any Unit, as may be reasonably necessary and at reasonable times after reasonable notice, for the purpose of (i) making repairs and improvements within the Condominium and/or (ii) exercising any Special Declarant Rights and/or (iii) discharging the Declarant's obligations under this Declaration.

ARTICLE V

Alterations and Improvements; Restrictions

Section 5.01 No Structural Alterations by Unit Owners. No Unit Owner will make any structural alteration, or structural improvement in or to his or her Unit or any other part of the Condominium, change the exterior appearance of a Unit, or any interior changes that are visible from the outside of the Unit, or install any device or other protruding object which is visible outside the Unit, without the prior written consent thereto of the Board of Directors in accordance with Section 5.03. The provisions of this Article V shall not apply to the Declarant in the exercise of any Special Declarant Right or to work performed by a Unit Owner, with the approval of Declarant, to ready such Owner's Unit(s) for initial occupancy.

Section 5.02 Permitted and Restricted Alterations. Subject to the provisions of Section 5.01, a Unit Owner:

(a) May make minor improvements or alterations to the interior of the Unit, such as minor cosmetic improvements (for example, painting of interior walls or wallpapering) that are not visible from the outside of the Building, and that do not (i) impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium, (ii) involve any of the Common Elements, or (iii) cause any noise or other disturbance;

(b) May not change the appearance of the Common Elements, or the exterior appearance of a Unit, or any other portion of the Common Elements, without permission of the Association;

(c) May not change the original floor covering (laminated flooring) or underlayment without written permission of the Board of Directors, due to the sound transmission characteristics of the Building, as further described in Section 6.12.

(d) With written permission of the Board of Directors, after acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium and if the removal or alteration complies with applicable building codes and similar requirements.

Except as may be approved by the Board of Directors, no alterations or improvements otherwise permitted hereunder may cause any increase in the premiums of any insurance policies carried by the Association or by the Unit Owners of any Units other than those affected by such change. No alterations or improvements made to any Unit shall be made in a manner inconsistent with the Lead-Based Paint Guidelines, as further provided in Section 6.16.

Section 5.03 Requests For Board Approval. A Unit Owner may submit a written request to the Board of Directors for approval to make alterations and changes prohibited under the two preceding sections, other than changes which would be inconsistent with the Lead Based Paint Guidelines. The Board shall review such requests in accordance with the provisions of the Bylaws and any Rules and Regulations, including any design guidelines adopted or approved by the Board, and shall approve or disapprove, with a written explanation of the basis for any disapproval, the written request within thirty (30) days after the request was received. The Board may in good faith extend such period an additional fifteen (15) days if it notifies the applicant before the end of the thirty (30) day period. Failure to so approve or disapprove the request within such time, including any extension, shall constitute consent by the Board of Directors to the proposed action. The Board's approval or disapproval of the request submitted to it, provided that the Board has acted in good faith and has provided the written explanation of a disapproval, shall be conclusive and binding on all interested parties.

Section 5.04 Scope of Review. Any proposed improvements or additions permitted under this Article shall be consistent with the style and character of the Improvements on the Property. This review process is intended to provide for limited and minimal individualization

of the appearance of the buildings while retaining the character of the original construction and character of the Property. The applicant shall pay for the cost of preparation of the application, the cost of professional review, if deemed required by the Board, and all fees and costs of permits and governmental submissions. The Board shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The responsibility for such aspects of the application shall rest solely with the applicant.

Section 5.05 Applications For Governmental Approval. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

Section 5.06 No Waiver of Future Approvals. The approval by the Board of Directors of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval of the Board, and the granting of any variances in connection with such approval, shall not be deemed a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval.

Section 5.07 Limitation on Liability; Indemnification. The Board shall use its judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Board nor any individual Board member shall be liable to any person for any official act of the Board in connection with submitted plans and specifications, except to the extent the Board or any individual Board member acted with malice or wrongful intent. Approval by the Board does not necessarily assure approval or the issuance of any required permit by the appropriate governmental authority. Notwithstanding that the Board has approved plans and specifications, neither the Board nor any of its members shall be responsible or liable to any Unit Owner or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Board nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Bylaws, Rules and Regulations and any design guidelines, nor for any structural or other defects in any work done according to such plans and specifications. The Board shall be indemnified, defended and held harmless by the Association from and against any loss, claim, liability, damage or expense which may arise by reason of the Board's decision. The Association, however, shall not be obligated to indemnify each member of the Board to the extent any such member of the Board is adjudged to be liable for negligence or misconduct in the performance of his duty as a member of the Board, unless and then only to the extent that the court in which such action or suit may be brought determines that such person is fairly and reasonably entitled to indemnification to the extent that such court shall deem proper.

Section 5.08 Enforcement and Inspection. Any member or authorized consultant of the Board, or any authorized officer, Director, employee or agent of the Association may enter upon any Unit at any reasonable time after reasonable notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction in the Unit to determine whether the improvements have been or are being built in compliance with the plans and specifications and other project documents approved by the Board.

Section 5.09 Architectural Committee. Declarant, during the Declarant Control Period, or if Declarant does not do so, the Board of Directors, may (but shall not be obligated to) designate, constitute and appoint an architectural committee to implement the provisions, including the submission, review and approval process, of this Article. Such committee, if constituted, shall consist of at least two (2) members, at least one (or if more than two members, a majority) of whom shall be Directors. In the event of a deadlock (if an even number of committee members are serving), an aggrieved applicant shall have an immediate right of appeal to the Board for the purpose of resolving such deadlock. Any action, ruling or decision of the Committee may be appealed to the Board of Directors and the Board of Directors shall have the power to modify or reverse any such action, ruling or decision.

ARTICLE VI OPERATIONS AND USE RESTRICTIONS

Section 6.01 Permitted Uses; Exceptions. Subject to the Special Declarant Rights reserved in this Declaration under Article XVI, and except for the Commercial Units, the use of each Unit is restricted to that of a single family residence and accessory uses as permitted herein. The term "single family residence" means a single housekeeping unit, operating on a nonprofit, noncommercial basis occupied by its Unit Owner. Except as otherwise provided in this Article, no industry, business, trade or commercial activities, shall be conducted, maintained or permitted in any part of a Unit. In the case of a Commercial Unit or Units, general business office and related commercial activities shall be permitted.

Section 6.02 Exception For Certain Activities. Home-based trade or professional pursuits are permitted, provided that:

- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (2) the business activity conforms to all zoning requirements for the Property;
- (3) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Condominium; and
- (4) the business activity 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, as may be determined in the sole discretion of the Board.

The terms "professional" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings. Such terms shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of a Unit (if and to the extent permitted under this Declaration) shall not be considered a business or trade within the meaning of this subsection.

Section 6.03 Declarant's Uses. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors to perform such reasonable activities, and to maintain upon portions of the Project, such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Condominium Units and development of the Project, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units, sales offices, parking areas and lighting facilities. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility or any portion of the Project in such a way as to unreasonably interfere with or disturb any Unit Owner, or unreasonably interfere with the use, enjoyment or access of such Unit Owner, his family members, guests or invitees of and to his Unit, parking areas, any recreational facility existing upon the Common Elements, and to a public right of way.

Section 6.04 Prohibited Operations and Uses. The following operations and uses shall not be permitted on or in connection with any Unit:

- (a) Noxious or offensive uses or operations as determined by the Board of Directors.
- (b) Any activity which the Board determines, acting reasonably, is or may become a "nuisance" to the Unit Owners of any Units or to other properties contiguous to the Project, including but not limited to (i) unsightliness, or (ii) excessive or unreasonable emission of noise, vibration, smoke (including tobacco smoke), toxic or noxious materials, odors, heat or air pollution.
- (c) Labor camps, junk yards, auto dismantling yards or bone distillation operations.
- (d) Disposal of garbage, sewage, offal, dead animals or refuse and fat rendering operations.
- (e) Selling, or displaying for sale, any vehicles other than a vehicles which are in daily, primary use by the Unit Owner.

Section 6.05 Animal Restrictions. No animals, livestock, poultry or insects, of any kind, shall be raised, bred, kept or boarded in or on the Project; provided, however, that a reasonable number of dogs, cats or other common household pets may be kept in any Unit, so long as they are not kept for any commercial purpose and are not of a type or are being kept in a number or manner so as to create a nuisance to other Unit Owners. The number and types of household pets allowed is subject to further restriction under the Rules and Regulations. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are of such type or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to other Unit Owners, or that a Unit Owner is otherwise in violation of the intent or provisions of this Section, and take such action or actions as it deems reasonably necessary to correct the same. A Unit Owner's right to keep household pets shall be conditioned upon the Unit Owner's assuming and discharging his/her responsibility to pay for any damages caused by such Unit Owner's pet(s). Venomous or other dangerous animals shall never be permitted in the Condominium.

Section 6.06 Refuse and Waste. All rubbish, trash, garbage and other waste shall be regularly removed from each Unit, and shall not be allowed to accumulate therein. The Association shall be responsible for installing dumpsters for the joint use of all Unit Owners. No refuse container shall be maintained in the Common Elements or on a Unit other than in the location and manner provided for by the Condominium Plat, and no such container shall be kept or maintained on any Unit so as to be visible to the general public. The Association shall be responsible for the costs of maintaining and emptying all refuse containers and dumpsters and the costs of refuse storage and collection, except that the Unit Owner of each Unit shall be responsible for the costs of disposing of any medical or hazardous waste from the Unit of that Unit Owner which cannot be disposed of in a landfill or by the ordinary means of disposal of waste or which requires special preparation, packaging or other processing for disposal under any rule, regulation, statute, law or ordinance of any municipal, county, state or federal governmental entity or agency.

Section 6.07 No Exposed Storage, Personal Items. Subject to the rights of Declarant as provided in Section 16.01 of this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in or removed from the Common Elements without the prior written approval of the Board of Directors of the Association.

Section 6.08 Leasing. The term "lease", as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. No Unit Owner shall be permitted to lease or rent all or any portion of his Unit except as provided in this Section. The leasing or rental of Units may be subject to restriction or prohibition, including (1) restrictions with respect to the Units the sale and financing of which was facilitated by Declarant's Bell Trading Post Soft Second Loan Program, and (2) restrictions or prohibitions imposed under applicable law, regulations and guidelines of HUD/FHA, VA, FNMA, FHLMC and similar bodies. Subject to such restrictions and prohibitions, a Unit Owner shall have the right to lease his Unit under the following conditions:

(a) all leases shall be in writing;

(b) all leases shall provide that the terms of the lease and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

(c) no lease shall be for a term shorter than six (6) months.

Any failure by the lessee of such Unit to comply with the terms of this Declaration or the Bylaws of the Association (including material or repeated violations of the Rules and Regulations) shall constitute an event of default under the lease or rental agreement. Such lease or rental agreement, prior to execution by the parties or effectiveness, shall be submitted to the Board for review and approval to assure compliance with this Declaration, the Bylaws and other similar major documents related to the Project.

If any tenant or lessee is found to be in violation of the provisions of the Condominium Documents, the Association may bring a forcible entry and detainer action in its own name and/or in the name of the Unit Owner to have the tenant or lessee evicted and/or to recover damages. To the fullest extent permitted by law, the Association may recover all of its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the action. The Association shall give the tenant or lessee and the Unit Owner notice in writing of the nature of the violation of the Condominium Documents, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

Declarant may lease any unsold Units, provided that any such leases shall comply with the requirements of subsections (a), (b) and (c) of this Section.

Section 6.09 Parking and Vehicles. (a) A total of twenty-one (21) off-street parking spaces shall be provided for the Condominium. The initial allocation of such parking spaces shall be as follows: (i) one parking space shall be designated handicap/disabled; (ii) fifteen (15) spaces of covered parking shall be provided, one of such spaces being available to each Unit, first-come-first-served; (iii) six (6) spaces of uncovered parking shall be provided and made available for the Commercial Unit.

(b) Subject to Section 6.10 and subsection (b) of this Section, no commercial vehicles and no trucks shall be parked within the Project except while temporarily engaged in transport to or from a Unit, and except such construction vehicles and equipment which may be necessary or incidental to the construction of improvements within the Property by Declarant. For the purposes of this Section, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck.

(c) No abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall be stored or parked on any portion of the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer,

camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle which has not been driven under its own propulsion for a period of two (2) weeks or longer, or any vehicle which does not have an operable propulsion system installed therein; provided, however, that the foregoing restrictions shall not include otherwise permitted vehicles parked by Unit Owners while on vacation or during a period of illness. In the event the Association shall determine that a vehicle is abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Unit Owner thereof (if such Unit Owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the Unit Owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within 72 hours thereafter, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

Section 6.10 Activities Adversely Affecting Insurance. Without the prior written approval of the Association, nothing shall be done or kept in any Unit or in the Common Elements, or any part thereof, which would result in the cancellation of any insurance, or any increase of the premium for any insurance coverage, over what the Association, but for such activity, would pay. Each Unit Owner shall indemnify and hold the Association and the other Unit Owners harmless from and against all loss and damage resulting from any action or activity committed by him, the members of his family, his guests, invitees or contract purchasers, which is in violation of this Section. On its own initiative or upon the written request of any Unit Owner (and, if the Association determines that further action by it is proper), and after notice and a hearing, the Association shall enforce the foregoing indemnity in the same manner as provided in Section 7.01 hereof with respect to a Unit Owner's indemnity against mechanic's liens.

Section 6.11 Signs and Advertising. Except as hereinafter provided, no signs, advertising, billboard, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant in connection with its sale or rental of Units, or otherwise in connection with its development of the Project, shall be permissible, provided that such use by the Declarant shall interfere with the Unit Owners' use and enjoyment of the Common Elements, their Units, or their ingress and egress from a public way to the Common Elements or their Units.

Signage for the Commercial Units will be subject to the reasonable approval of the Board of Directors, as well as compliance with all applicable requirements of governmental agencies and bodies.

Section 6.12 Sound Abatement; Disclaimer. The Board may promulgate Rules and Regulations relating to noise abatement. The Units and their construction have been designed to produce Sound Transmission Coefficient (STC) ratings in the Condominium Building at least equal to the requirements of Section 1207 of the 2003 International Building Code. However, sound, both laterally and vertically, from adjoining Units and Common Elements, is inevitable. In buildings of historic significance, such as the Condominium Building, sound propagation may exceed that of newer buildings. In addition, sound may penetrate Units from

the exterior of the Building, including sounds from vehicles, voices, and equipment operations. Unit Owners acknowledge, by their purchase of Units subject to this Declaration, that the Condominium Building and the Units are not "soundproof." **Accordingly, each Owner specifically waives any claim against Declarant and/or the Association with respect to sound transmission to or within a Unit.** As part of the noise abatement program implemented by Declarant in the design and construction of the Units, hard flooring with extra sound-reducing padding has been installed in the Units. Such flooring, therefore, may not be changed by Unit Owners without the express written permission of the Board. In addition, the Board shall have the power to require rugs or carpets over a specified portion of the floor area of a Unit, to set a decibel limitation on noise emitting from a Unit, or to adopt other requirements or restrictions for the purpose of noise abatement. The Board may establish reasonable hours during which music may not be played, and limiting the number of guests in a unit at the same time. Unit Owners of Units on upper floors are encouraged to remove their shoes while in their Unit, as a matter of courtesy.

Section 6.13 Title to Units. Title to a Unit may be taken in the name of one or more persons, in any manner permitted by law. The Association may acquire, hold and transfer full legal title to one or more Units in its own name.

Section 6.14 No Partition. Except as may be permitted in this Declaration or amendments thereto, no Unit Owner shall have the right to partition his interest in the Unit and there shall be no judicial partition of the Property, or any part thereof. Except as provided above, each Unit Owner and the successors of each Unit Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Unit Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in the Common Elements of the Project and further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property or from acquiring title to real property which may or may not be subject to this Declaration.

Section 6.15 Lead-Based Paint Guidelines. The Condominium Building has undergone environmental remediation to address the presence of lead-based paint which was found in many of the original walls. The lead-based paint has been encapsulated according to current industry standards. Applicable regulations of the U.S. Department of Housing and Urban Development impose upon Declarant and the Association requirements as to disclosure and maintenance activities regarding lead-based paint (the "HUD Lead-Based Paint Guidelines"). The Unit Owners shall observe the HUD Lead-Based Paint Guidelines in their ownership and maintenance of the Units, including any alterations made in the Units. In particular, Declarant, in connection with all sales of Units, and each Unit Owner, in connection with any resales of Units, is required to provide any agents and the prospective purchaser with the prescribed Lead Warning Statement, as well as information, regarding the presence of lead-based paint in the Building, and the remediation that was undertaken by Declarant, including related records and reports. Declarant or a selling Unit Owner, as the case may be, shall also afford the purchaser the required review period, and provide a copy of the required informational pamphlet *Protect Your Family from Lead in Your Home*.

ARTICLE VII MECHANICS' LIENS

Section 7.01 Mechanics' Liens. No labor performed or materials furnished for use and incorporated in any Condominium Unit with the consent or at the request of the Unit Owner thereof, his agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Unit Owner not expressly consenting to or requesting the same, or against any interest in Common Elements except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have performed or such materials furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien against the Unit of any other Unit Owner, the Common Elements, or any part thereof, for labor performed or for materials furnished in work on the first Unit Owner's Condominium Unit.

Section 7.02 Enforcement by the Association. On its own initiative or upon the written request of any Unit Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 7.01 by collecting from the Unit Owner of the Unit on which the labor was performed or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Unit Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Unit Owner of the total amount, or any portions thereof, from time to time, of the amount to be indemnified, then the failure to do so indemnify shall be a default by such Unit Owner under the provisions of this Section 7.02 and such amount to be indemnified shall automatically become a defaulted assessment determined and levied against such Unit, and the Association may proceed in accordance with Section 9.11 hereof.

ARTICLE VIII ASSOCIATION

Section 8.01 Formation of Association; Administration of Property. (a) The Association of Unit Owners shall be formed before or promptly upon conveyance of the first Unit to a Unit Owner other than Declarant. The Association shall act by and through its Board of Directors, who shall be elected in accordance with this Declaration and the Bylaws, and whose duties will be governed by the terms of this Declaration, the Articles and the Bylaws.

(b) Declarant shall appoint and remove all of the Board of Directors and the officers until sixty (60) days after fifty percent (50%) of the Units have been conveyed to a Unit Owner other than Declarant. Thereafter, Declarant shall appoint a majority of the Board of Directors, and all of the officers, until the end of the Declarant Control Period. Declarant may, before the

occurrence of the foregoing time limits, voluntarily surrender the right to appoint and remove any or all Directors and/or officers by recording a notice to that effect in the Office of the County Clerk of Bernalillo County, New Mexico. Such notice, if recorded, may require that, until the expiration of the Declarant Control Period, certain specified actions of the Association or the Board be approved by Declarant before those actions will take effect.

(c) After the Declarant Control Period has expired or voluntarily terminated, as the case may be, the Directors and officers of the Association will be elected as provided in the Bylaws.

(d) The Project and all provisions of this Declaration shall be administered by Declarant until the Association is formed as provided herein, and thereafter the Project and Declaration shall be administered by the Association. The Association (or Declarant, as applicable) shall have the responsibility of maintaining and repairing the Common Elements as provided under Article XI.

Section 8.02 Membership. Each Unit Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Unit. Ownership of a Unit shall be the sole qualification for membership. The membership held by a Unit Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of that Unit Owner's Unit, and then only to the purchaser or Mortgagee of that Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. Evidence of transfer of membership shall be furnished to the Association in the form of a copy, certified or otherwise authenticated, of the recorded conveyance of a Unit by the current Unit Owner thereof as reflected upon the books and records of the Association.

Section 8.03 Voting Rights. (a) The Unit Owners (including Declarant, for so long as Declarant is a Unit Owner) shall have the right to vote in Association matters, as provided in this Declaration.

(b) Votes shall be allocated to Units based on the finished square footage of area in a Unit, i.e. each Unit shall have a number of votes equal to the number of square feet within the Unit. The number of votes will be determined by reference to the square footage areas of Units as shown on the Condominium Plat or as set forth in Exhibit C to this Declaration.

(c) The Bylaws shall provide for voting at Members' meetings and designation of voting rights as among joint Unit Owners of the Units. Fractional votes shall not be allowed. The Board shall have no power to determine any matters relating to the entitlement of Declarant to vote, or the manner in which such vote is exercised. All matters brought before Member's meetings shall be decided by a majority of the votes cast, except as otherwise provided in this Declaration and the bylaws.

(d) The Bylaws also shall provide that votes may be cast by proxy and, subject to requirements of the Act, shall prescribe the general terms of proxies.

Section 8.04 Suspension of Voting Rights; Eligibility For Office. The voting rights of any Member shall be automatically suspended during any period in which a Member is delinquent in the payment of any Assessments due the Association. In the event and during the period of such suspension, the suspended votes will not be counted for or against any questions coming before the Members. In addition, any such delinquent Member shall be ineligible to become a Director or officer of the Association until such delinquency is removed and the Association has reasonable assurance that such delinquency will not recur, as further provided in the Bylaws. If any Director or officer shall be delinquent in the payment of Assessments by more than two (2) consecutive months or on more than three (3) separate occasions during any 12 month period, the Director or officer may be removed as such by (a) the Declarant, during the Declarant Control Period, or (b) the Board, after the end of the Declarant Control Period.

Section 8.05 Powers of Board. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary and proper to conduct, manage and control the affairs and business of the Association. The Board shall have all general and specific powers authorized under the Act and the New Mexico Nonprofit Corporation Act, and as provided under the Articles, the Bylaws and this Declaration. In addition and not in limitation of such powers, the Board shall have the following specific powers:

(a) Enforce the provisions of this Declaration and all agreements to which the Association is a party, including the restriction, abatement and elimination of any and all operations and uses provided for in Article VI;

(b) Provide for the management, maintenance, repair and replacement of the Common Elements.

(c) Maintain fire, casualty, liability and fidelity bond coverage, and other insurance coverage pursuant to Article X of this Declaration.

(d) Provide for the management and operation of the Project and the administration of the Association;

(e) Enter into any Unit when necessary in connection with maintenance or construction for which the Association is responsible, or to address any emergency condition within the Unit;

(f) In its discretion, retain private security services to provide patrol service to the Project and to monitor and enforce any parking regulations set forth herein or in the Rules and Regulations promulgated and adopted by the Board;

(g) Contract with Declarant, its successors or assigns, for the purpose of entry into a maintenance and/or subsidy agreement between Declarant and the Association, for the purpose of reducing the financial obligations of Unit Owners in the Project, including during the initial construction and development of the Project;

(h) Pay, provide for and discharge by payment, if necessary, any and all taxes, assessments and liens against the Common Elements or other portions of the Project, and, after notice and hearing as provided in the Bylaws, charge the cost of discharging said lien to the Unit Owner or Unit Owners responsible for its existence;

(i) Assign the Association's right to future income, including the right to receive payment of assessments, but only to the extent this Declaration so provides;

(j) Prepare operating and other budgets and related financial statements and reports for the Association and provide for, impose and enforcement payment by the Unit Owners of, assessments of the type specified in this Declaration;

(k) Prepare any agreement regarding any merger or consolidation of the Condominium with any one or more other condominiums and submit such agreement to the president of the Association for execution, recordation and certification upon the requisite approval of the Members as provided by law; and

(l) Perform any and all other acts and things that the board of directors of a nonprofit corporation organized under the New Mexico Nonprofit Corporation Act is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

The Board shall have any and all powers incidental to the fulfillment and performance of the foregoing and other powers and duties conferred upon the Board by the Articles, the Bylaws, this Declaration, and the Act and other applicable law.

Section 8.06 Association Rules and Regulations. The Board shall also have the power to adopt, amend, repeal and replace Rules and Regulations, as it deems reasonable. The Rules and Regulations shall govern such matters as the use of the Common Elements, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Units, prevention or remedy of unsafe, unsanitary or unreasonably annoying conditions, consistent with any and all standards set forth in this Declaration or adopted by the Board of Directors, and any other matter which is within the power of the Association; provided, however, that the Rules and Regulations may not discriminate among Unit Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Unit Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Unit Owners and their successors in interest, whether or not actually received by them. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Unit Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or Bylaws, the conflicting provisions of the Rules and Regulations shall be deemed to be superseded.

Section 8.07 Schedule of Fines and Penalties. The Board may adopt, as part of the Rules and Regulations or otherwise, a schedule of reasonable fines and penalties which, in its reasonable discretion, it may impose against a Unit Owner for the failure of such Unit Owner, or of a resident, guest or invitee of such Unit Owner, to comply with any provisions of any of the Condominium Documents. The Board shall adopt and distribute to each Member, by personal delivery or by first class mail, a schedule of such fines and penalties. The Board shall not be required to distribute any additional schedules unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this Section. Such fines or penalties may only be imposed by the Board after notice and hearing, as set forth in the Bylaws. All fines and penalties are personal obligations of the Unit Owner against whom such fines and penalties are imposed, and are not enforceable by lien.

ARTICLE IX ASSESSMENTS

Section 9.01 Imposition, Purpose of Assessments; Limited Exemption. The Assessments shall be determined and levied by the Board of Directors on behalf of the Association and shall be used exclusively to promote the health, safety and welfare of the occupants of the Units and for the operation, replacement, improvement and maintenance of the Project and to discharge any other obligations of the Association under this Declaration. Nothing in this Declaration shall be construed in such a way as to prohibit the Association from using any Assessments to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be authorized, determined and imposed as provided in Section 9.07 and shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

Assessments shall be levied upon Units for such purposes that are authorized by this Declaration, the Bylaws or by the Board of Directors from time to time. The Assessment imposed upon each Unit shall include assessments made with respect to Limited Common Elements as charged and allocated in accordance with Section 11.01.

Section 9.02 Maintenance Funds of Association. The Board of Directors shall establish no fewer than two (2) separate Maintenance Funds on the books of the Association, into which shall be credited all monies paid to the Association, and from which shall be debited all disbursements made, as provided herein, in the performance of functions by the Association under this Declaration. The Maintenance funds shall include: (1) an Operating Fund for current annual portions of Common Expenses of the Association, (2) an adequate Reserve Fund for capital improvements, replacements, painting and repairs of the Common Elements (those which normally are expected to occur less frequently than annually), and for payment of deductibles under policies of insurance which the Association obtains as provided in Section 10.01 hereof. The Board of Directors may establish any other accounts as additional Maintenance Funds as it may deem necessary to properly carry out under the provisions of this Declaration so long as the amounts credited to, and debited from, any such Fund are earmarked for specified purposes authorized by this Declaration. The Board of Directors shall

not commingle in the books and records of the Association any amounts deposited into any of the Maintenance Funds with one another.

All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Unit Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the Members, other than those purposes for which disbursements from the Reserve fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors for the respective purposes specified in this Article. Moneys in the Reserve fund also may be disbursed in connection with repairs, replacements and/or improvements in connection with damage or destruction or condemnation of the Property for which the proceeds of insurance maintained by the Association are inadequate and which the Board determines to be an appropriate expenditure of such moneys in the absence of such damage, destruction or condemnation.

At its initial annual meeting and at each annual meeting thereafter, the Board shall consider the adequacy of the Reserve Fund. In addition, if warranted, the Board may arrange for and obtain a study of such adequacy by a qualified organization not affiliated with the Board or the Association and further may cause such study to be updated at intervals the Board may deem appropriate.

Section 9.03 Assessments For Certain Property Taxes. The Association shall pay all real and personal property taxes duly and validly assessed upon any portion of the Property other than the Units. Each Unit, including the proportionate interest in Common Elements, shall be assessed separately for all taxes, assessments and other charges of each applicable taxing or assessing authority, in accordance with the Act.

In addition, if the Units in the Project for any reason are included in any blanket assessment covering Common Elements and Units in the Project, the taxes relating to such blanket assessment shall be allocated proportionately among the Unit Owners and their Units based upon their Allocated Interests. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Unit Owner a copy of the tax bill, along with a written notice setting forth the Unit Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the Unit Owner for failure to comply. Each affected Unit Owner shall pay its proportionate share of any installment due under the corresponding tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency. The Association shall pay the taxes on behalf of any Unit Owner who does not pay his proportionate share. The Association shall levy a Special Assessment against any delinquent Unit Owner in the amount of any sum advanced, and may, in addition, include as part of the Special Assessment an amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill. Until the closing of the sale of the last Unit in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of the Declarant.

Section 9.04 Personal Obligation of Assessments. Declarant, for each Unit owned by it, hereby covenants and agrees to pay, and each Unit Owner, by acceptance of a deed to a Unit is deemed to covenant and agree to pay to the Association all Annual Assessments for Common Expenses and all applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Except as provided in this Section, all such Assessments, together with interest, costs, and reasonable attorney's fees, shall be a separate, distinct and personal obligation of the Person who was the Unit Owner of the Unit at the time when the Assessment fell due, and shall bind his heirs, devisees, personal representatives and assigns. This personal obligation cannot be avoided by abandonment of the Unit or by an offer to waive use of the Common Elements.

Section 9.05 Conveyances, Other Transfers; Mortgagees. A sale or transfer of any Unit shall not affect the Assessment lien. No sale or transfer shall relieve such Unit from liens for any Assessments thereafter becoming due. Upon any voluntary or involuntary conveyance of a Unit, the new Unit Owner ("Purchaser") shall be jointly and severally liable with the previous Unit Owner ("Seller") for all unpaid Assessments levied by the Board of Directors against the Seller for his share of the Common Expenses up to the time the grant or conveyance was recorded, without prejudice to the right of the Purchaser to collect from the Seller therefor. However, any such Purchaser shall be entitled to a statement from the Board of Directors, setting forth the amount of the unpaid Assessments against the Seller due the Association. The Unit conveyed shall not be encumbered by, nor shall the Purchaser be liable for, any unpaid Assessments levied by the Board of Directors against the Seller in excess of the amount set forth in such statement; provided, however, that the Purchaser shall be liable for any such Assessment becoming due after the date of any such statement. Notwithstanding the foregoing, (i) any Eligible Mortgagee who obtains title to a Unit through foreclosure of the first Mortgage or deed in lieu of foreclosure (where the first Mortgage was recorded prior to recording of the Notice of Lien under Section 9.10 as to the unpaid Assessments), or (ii) in the sole discretion of the Board, any other purchaser for value who obtains title through such foreclosure or deed in lieu of foreclosure, shall not be liable for unpaid Assessments or charges against the mortgaged Unit which accrue prior to the time such Mortgagee or purchaser acquires title to that Unit. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners of the Units in the Property including such acquirer, his successors and assigns.

Section 9.06 Limitations of Annual Assessment Increases. The following provisions apply to increases in Annual Assessments:

(a) *Annual Assessments – Initial Year.* During the Fiscal Year in which Annual Assessments commence, the Board shall levy Annual Assessments in the amount shown in the most current budget filed with and approved by the Association at its initial organizational meeting.

(b) *Maximum Annual Assessment - Subsequent Years.* Starting with the first Fiscal Year immediately following the Fiscal Year in which annual Assessments commence, Annual Assessments in any Fiscal Year shall not exceed the level in effect for the preceding Fiscal

Year by more than (i) twenty percent (20%) or (ii) if greater, a percentage which is three (3) times the increase in the Consumer Price Index during the immediately preceding annual measurement period, unless approved by the Members at a meeting or election of the Association at which a Special Quorum is present. As used in the preceding sentence, "Consumer Price Index" means the index now known as "United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, U.S. Cities Average, All Items, Index Base 1982-1984" or, if the Consumer Price Index shall ever cease to be maintained or published, using a substantially comparable index designated by the Board of Directors. This Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation," as defined in subsection (d) of this Section.

(c) *Revised Annual Assessments.* If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in any amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in subsections (a) and (b) above and (d) below, the Board shall have the authority to levy, at any time by a majority vote, a revised Annual Assessment reflecting a revision of the total charges to be assessed against each Unit.

(d) *Emergency Situations.* For purposes of subsections (a) and (b) above and Section 9.07, an "Emergency Situation" is either of the following:

(1) An extraordinary expense required by court order or administrative order or ruling;

(2) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible

(i) when a threat to personal safety on the Property is discovered;
and

(ii) that could not have been reasonably foreseen by the Board when preparing the budget.

Prior to the imposition or collection of an Assessment pursuant to this subparagraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the Notice of Assessment.

Section 9.07 Imposition and Payment of Annual Assessments. (a) Pursuant to the Bylaws, the Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein, by majority vote of the Board. The initial Annual Assessment shall begin on all Units in the Project (including unsold Units therein owned by

Declarant) on the first day of the first calendar month following the first close of escrow for the sale of a Unit in the Project. All Annual Assessments shall be uniformly assessed against the Members and their Units based upon the Allocated Interest of each Unit. Annual Assessments for fractions of any month involved shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Units for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Unit, as provided in the Bylaws, in advance of each Annual Assessment period. The Board also, pursuant to the Bylaws, may provide for applying any excess and collecting for any shortfalls in the Annual Assessments for the preceding year, as compared to the actual Common Expenses incurred. At the end of the Fiscal Year, the Members, at a duly convened meeting, may determine that all or any portion of excess funds in the Operating Fund may be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment of the Property or termination of the condominium regime, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

(b) Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fifteen (15) nor more than thirty (30) days after mailing of the summary. Unless at that meeting the Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. Unless impracticable or except in the event of an exigency requiring earlier determination by the Board, budgets subsequent to the initial budget shall be proposed and submitted for adoption at the annual meeting of the Association.

(c) Each Member shall pay to the Association its Annual Assessment in installments at such frequency and in such amounts as established by the Board. If any installment of Annual Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or funds into which it should be credited, the receipt by the Association from that Unit Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

Section 9.08 Capital Improvement Assessment. Should the Board of Directors determine the need for any addition, alteration or improvement constituting a capital improvement or other such addition to the Common Elements, the cost of which in the aggregate exceeds the portion of the Reserve Fund allocated to capital expenditures or which exceeds five percent (5%) of the budgeted gross expenses of the Association for the then current Fiscal Year, then the Board may propose a "Capital Improvement Assessment" to be levied by the Board of Directors to cover the cost of such expenditure. A Capital Improvement Assessment must be approved by the following margin of votes of Members present or by proxy at a duly convened meeting or election of the Association: (i) a majority

of the votes, if the amount of the proposed Capital Improvement Assessment exceeds five percent (5%) but does not exceed ten percent (10%) of the budgeted gross expenses of the Association for the then current Fiscal Year and seventy-six percent (76%) of the votes, if the amount of the proposed Capital Improvement Assessment exceeds ten percent (10%) of the such budgeted gross expenses. Capital Improvement Assessments may be levied by the Board without the consent of the Members, if the aggregate of such expenditures in each Fiscal Year does not exceed five percent (5%) of the budgeted gross expenses of the Association for such Fiscal Year. Notwithstanding the foregoing, the Board may levy in any Fiscal Year a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the budgeted gross expenses of the Association for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 9.06(d).

Section 9.09 Delinquency and Acceleration. Any installment of an Assessment provided for in this Declaration shall become delinquent if not paid on the due date as established by the Board of Directors of the Association. With respect to each installment of an Assessment not paid within twenty (20) days after its due date, the Board of Directors may, at its election, require the delinquent Unit Owner to pay a reasonable late charge, together with interest on such delinquent sums at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board shall mail a notice to the Unit Owner and to each Eligible Mortgagee of a Unit which has requested a copy of the notice. Such notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than five (5) business days from the date the notice is mailed to the Unit Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessment for the then current Fiscal Year and the sale of the Unit. If the delinquent installments of the Assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Assessment for the then current Fiscal Year, attributable to that Unit Owner and his Unit, to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration.

Voting rights of a Unit Owner-Member of the Association under Article VIII may be suspended during the period of any delinquency of the Unit Owner-Member's payment of any Assessments; provided, that any suspension for either such nonpayment of any Assessment or breach of the Restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided in this Declaration.

Section 9.10 Existence, Priority, Release of Lien; Homestead Exemption; Assignment. (a) All Assessments and other sums assessed or imposed in accordance with the provisions of this Declaration shall constitute a lien on the respective Unit prior and superior to all other liens, except (1) all taxes, bonds and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage (meaning any Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior

to the date on which the "Notice of Lien" (described in this section) against the respective Unit was recorded. The lien is deemed effective upon recordation of this Declaration, as provided in Section 47-7C-16C of the Act. To the extent permitted by law, each purchaser of a Unit waives any homestead exemption provided now or in the future by any federal law or the law of New Mexico, as to the enforcement, foreclosure of and realization upon the lien for Assessments under this Declaration.

(b) The Notice of Lien shall state (i) the interest, including the cost of preparing and recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorney's fees, (iii) a sufficient description of the Unit against which the same has been assessed, (iv) the name of the Unit Owner thereof, and (v) the name and address of the Association. The Notice of Lien shall be signed by an authorized representative of the Association. The lien shall relate only to the individual Unit against which the Assessment was levied and not to the Property as a whole.

(c) Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable Unit Owner a reasonable charge for the preparation and recordation of the Notice of Release before recording it. Any purchaser or encumbrancer who has acted in good faith and given value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

(d) The Association may assign its rights with respect to its lien for Assessments imposed under this Declaration, in connection with any financing for Condominium purposes approved by the Board of Directors and the Members.

Section 9.11 Enforcement of Delinquent Assessments. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one or more of the alternative means of relief afforded by this Declaration. Following compliance with Sections 9.09 and 9.10, the lien may be enforced by foreclosure in the same manner as a mortgage on real estate. An action to foreclose the lien may be brought by the Board, or by any Unit Owner if the Board, after written demand therefor, fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was recorded; provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Unit Owner affected thereby. The Association, through its agents, shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Unit Owner's Unit and the defaulting Unit Owner shall be required to pay the reasonable rental value for such Unit during any period of continued occupancy by the defaulting Unit Owner or any persons claiming under the defaulting Unit Owner. An action to recover a money judgment for unpaid Assessments may be brought and maintained (or asserted as counterclaim or crossclaim in any action) without foreclosing or waiving the lien securing the same, but this provision or any institution of an action to recover a money judgment shall not constitute an affirmation of the

adequacy of money damages. Any recovery resulting from a suit in law or equity initiated pursuant to this Section may include reasonable attorneys' fees and other costs of collection. The Board also may negotiate with and accept from the Unit Owner a deed in lieu of foreclosure of the Unit, on such terms and conditions as the Board may deem fair and equitable.

ARTICLE X INSURANCE

Section 10.01 In General. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Board of Directors on behalf of the Association shall obtain and maintain, to the extent reasonably available, from generally acceptable insurance carriers:

(a) A master policy of property insurance on the Project, which may, but need not, include equipment, improvements, and betterments in a Unit installed by the Declarant or the Unit Owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall not be less than one hundred percent of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the Board but not less than One Million Dollars (\$1,000,000), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and any commercial space owned or leased by the Association; and legal liability related to employment contracts, if any, with the Association.

(c) Workers' compensation insurance to the extent required by applicable laws.

(d) If the Condominium contains more than thirty (30) Units, fidelity bonds naming as principals and the Association as obligees such of the members of the Board, officers and any employees of the Association, the Manager and its employees, and such other persons as may be designated by the Board as may be handling or responsible for funds of the Association. Such fidelity bonds shall be issued in at least an amount equal to three months aggregate Assessments for all Units, plus reserves, in the custody of the Association or Manager at any given time during the term of each bond. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons serving without compensation from any definitions of "employee" or similar expression.

(e) Insurance against loss of personal property of the Association by fire, theft and other losses with deductible provisions as the Board deems advisable.

(f) Such other insurance (including directors and officers liability) as the Board deems advisable; provided, that notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veteran's Administration, or other governmental or quasi-governmental agencies involved in the secondary mortgage market, so long as any such agency is a Mortgagee or Owner of a Unit within the project, except to the extent such coverage is not available or has been waived in writing by such agency.

The cost of such insurance and bonds maintained by the Association shall be a Common Expense, and the payment of any required deductible in the event of a claim under any policy may be treated as a Common Expense, depending on the area within the Property (whether Common Elements or one or more Units) damaged or destroyed and depending on whether the claims or damages arise from the negligence of particular Unit Owners, or the repairs benefit only particular Unit Owners. Except as otherwise set forth in this Article, the maximum deductible amount shall not exceed \$10,000.

The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as the developer of the Project.

Section 10.02 Coverage Not Available. If the insurance described in Section 10.01 is not reasonable available, or is modified, canceled, or not renewed, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by first class United States mail to all Unit Owners, to each Eligible Mortgagee, and to each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.

Section 10.03 Required Provisions. Insurance policies carried pursuant to this Article shall:

(a) provide that each Unit Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association, and that Declarant is an insured person until all the Units have been conveyed;

(b) provide that the insurer waives its right to subrogation under the policy as to any and all claims against the Association, the Owner of any Unit and/or their respective agents, employees or tenants, and members of their household, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured;

(c) provide that no act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, nor any failure of the Association to

comply with any warranty or condition regarding any portion of the premises over which the Association has no direct control, will void the policy or be a condition to recovery under the policy;

(d) provide that if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance, and that the liability of the insurer thereunder shall not be affected by, and the insurer shall not claim any right of set-off, counterclaims, apportionment, proration, contribution or assessment by reason of, any other insurance obtained by or for any Unit Owner or any Mortgagee;

(e) provide that, despite any provision giving the insurer the right to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association, or when in conflict with the provisions of any insurance trust agreement to which the Association is a party, or any requirement of law;

(f) provide that coverage shall not be prejudiced by (i) any act or neglect of any Unit Owner (including a Unit Owner's family, tenants, servants, agents, invitees and guests) when such act or neglect is not within the control of the Association; or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind on the part of a Unit Owner (including the Unit Owner's family, tenants, servants, agents, invitees and guests) or any Director, officer, employee or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter; and the policy shall contain no provision (other than insurance conditions) which will prevent Mortgagees from collecting insurance proceeds;

(g) The master policy of property insurance required under Section 10.01(a) shall provide for (a) coverage as to all perils normally covered by the standard "all-risk" endorsement, if available, as to condominiums similar in construction, location and use (b) losses payable to the Association or insurance trustee, as trustee for each Unit Owner and his or her Mortgagee, (b) a standard mortgage clause acceptable to private mortgage investors in the area, naming any insurer or guarantor, if applicable;

(h) contain, if available at a reasonable cost, an Agreed Amount Endorsement and Inflation Guard Endorsement; and

(i) prohibit cancellation or substantial modification without at least 10 days' prior written notice to the Association, each holder of a first Mortgage holder scheduled as such in the policies, and, if required, each insurer or guarantor of such Mortgage.

Section 10.04 Claims Adjustment. Any loss covered by the property insurance under this Article must be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests

may appear. Subject to the provisions of Article XI, the proceeds must be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated. Each Unit Owner hereby appoints an officer or Board member or any duly constituted representative of the Association, or any insurance trustee, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, negotiation of losses and execution of releases of liability, execution of all documents, and performance of all other acts necessary to accomplish such purpose.

Section 10.05 Unit Owner's Insurance. Each Unit Owner, at such Unit Owner's expense, shall maintain property damage insurance on such Unit Owner's personal property and furnishings and public liability insurance covering the Unit. However, no Unit Owner's insurance coverage shall operate to decrease the amount which the Board of Directors, on behalf of all Unit Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. A Unit Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association resulting from insurance coverage maintained by the Unit Owner. Each Unit Owner's policy shall contain a provision waiving the particular insurance company's right of subrogation against the Association and other Unit Owners, including Declarant, should Declarant be the Unit Owner of any Unit.

Section 10.06 Certificate. An insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner or holder of a Mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable New Mexico laws and regulations pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy, without complying with the requirements of the Act.

Section 10.07 Notification on Sale of Unit. Promptly upon the conveyance of a Unit, the new Unit Owner shall notify the Association of the date of the conveyance and the Unit Owner's name and address. The Association shall notify each insurance company that has issued an insurance policy to the Association for the benefit of the Owners under this Article of the name and address of the new Owner and request that the new Owner be made a named insured under such policy.

**ARTICLE XI
MAINTENANCE; DAMAGE,
DESTRUCTION OF IMPROVEMENTS**

Section 11.01 Duties of Association. The Association (or Declarant, prior to the formation of the Association) shall cause to be inspected regularly, and shall repair, replace and maintain the Common Elements, or shall arrange and contract for such inspection, repair, replacement and maintenance, in a state of good repair and condition. Such repairs and maintenance shall include all walks, private driveways and other means of ingress and egress within the Property, as well as all exterior surfaces (other than windows) of any building, landscaping, sprinkler systems, exterior lighting fixtures, roofs, parking areas, carports, refuse containers and dumpsters, and all sidewalks. All such costs of maintenance, repairs and replacements for the Project, along with premiums for insurance carried in accordance with Section 10.01, shall constitute Common Expenses payable out of Maintenance Funds. All work performed (and insurance premiums paid) with respect to Limited Common Elements shall be charged and allocated to the Unit or Units benefited by such work and shall be separately assessed to or among such Unit or Units. All other work performed for or on behalf of a Unit Owner which is not the responsibility of the Association shall be charged to the Unit Owner as a Special Assessment.

Section 11.02 Managing Agent. The Association (or Declarant) may employ a professional management agent, referred to as the "Managing Agent," to perform, subject to the supervision of the Board of Directors, such duties and services as the Board shall direct including, but not limited to, management of any Common Elements, maintenance and repair of the Common Elements and the collection of and accounting for Assessments made by the Association. Each employment agreement with a Managing Agent shall provide for compensation to be established by the Board and shall further provide for the right of the Association to cancel same upon not more than thirty (30) days' notice. The Managing Agent shall be a person or firm who shall have been in the business of managing income-producing real properties for at least two (2) years prior to employment by the Association and shall be subject to such additional qualifications and requirements as may be set forth in the Bylaws, supplemented by the Board; such person or firm shall not be ineligible to serve solely because of being affiliated with the Declarant or a member of the Board.

Section 11.03 Duties of Unit Owners. Each Unit Owner shall be responsible, at the expense of the Unit Owner, for keeping the interior of his Unit, including without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and in a good state or repair. Without submission to and approval by the Board pursuant to provisions of the Bylaws, no Unit Owner shall do any act which may impair the structural soundness of the Condominium Buildings or impair any easement herein granted or reserved. No Unit Owner shall change the appearance of any portion of the exterior of the building containing the Unit from the original construction or as modified by the Association. Unit Owners of adjoining Units may not, without submission to and subsequent approval by the Board, relocate boundaries between such Units or specify a different Allocated Interest assigned to such Units.

Section 11.04 Failure to Maintain. In the event a Unit Owner shall fail, within a thirty (30) day period following written notice from the Association, to perform maintenance required to be performed by that Unit Owner under this Declaration, the Association may, but shall not be obligated to, enter into and upon such Unit Owner's Unit and any Common Elements appurtenant thereto and accomplish such maintenance for and on behalf of the Unit Owner, and the cost thereof shall be considered a Special Expense.

Section 11.05 Damage by Unit Owner. Each Unit Owner shall be liable to the Association for any damage to the Common Elements or any area which is to be maintained and repaired by the Association under this Declaration not fully reimbursed to the Association by insurance if the damage is sustained because of negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by a Unit Owner, including such Unit Owner's invitees. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Unit Owner or the other persons as described above. In the case of joint ownership of a Unit, the liability of the Unit Owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint Unit Owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit, and may be enforced to the same extent as other Assessments.

Section 11.06 Destruction and Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property and Improvements other than the Unit Owner's insurable property, the Association shall restore and repair the same to its former condition, as promptly as practical. The proceeds of insurance maintained pursuant to Article X hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board is authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be repaired or rebuilt substantially in accordance with the Condominium Plat and the original construction plans if they are available, unless changes are recommended by the Board and have been approved in writing by at least sixty-seven percent (67%) of the Unit Owners and by of at least fifty-one percent (51%) of the Mortgagees holding first Mortgages on the Units affected by the destruction.

A Reconstruction Assessment of the Unit Owners shall be levied by the Board of Directors to provide any funds needed for such reconstruction, over and above the amount of any available insurance proceeds and any other funds legally available for such purpose. The amount, terms and payment provisions of any Reconstruction Assessment shall be established by resolution of the Board of Directors.

Section 11.07 Interior Damage. Restoration and repair of any damage to Unit Owner's insurable property in the interior of any individual Unit, shall be made by and at the individual expense of the Unit Owner of the Unit so damaged. Such interior repair and

restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Board.

Section 11.08 Notice to Unit Owners and Listed Mortgagees. The Board, immediately upon becoming aware of any damage or destruction to the Common Elements, or any portion thereof, shall promptly notify all Unit Owners and further shall notify all Mortgagees, insurers and guarantors as to all first Mortgages on Units in the Project who have filed a written request for such notice with the Board.

Section 11.09 Alteration and Improvement of Common Elements. After the completion of the Improvements included in the Common Elements which are contemplated by this Declaration, there shall be no alteration or further improvement of Common Elements without prior written approval of the Association and compliance with this Declaration, subject, however, to the Special Declarant Rights described herein, and except for alterations or improvements which the Board determines are required or reasonably necessary to assure the health and safety of the Unit Owners and other persons using the Property or to comply with a legal requirement.

Section 11.10 Right of Entry Upon Units, Common Elements. The Board and its agents or employees, may enter any Unit or Limited Common Element when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible or in the event of emergencies. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board paid for as a Common Expense if the entry was due to an emergency or for the purpose of maintenance or repairs to Common or Limited Common Elements where the repairs were undertaken by or under the direction or authority of the Board, except as provided in Section 11.01. In furtherance of the foregoing, the Board (or its designated agent) shall have the right at all times to possess such keys and/or lock combinations as are necessary to gain immediate access to Units and Limited Common Elements.

ARTICLE XII CONDEMNATION

Section 12.01 Consequences of Condemnation. If, at any time or times during the continuance of the Project pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation (any of the foregoing actions are referred to herein as "condemnation"), then all compensation, damages, or other proceeds of condemnation, the sum of which is referred to as the "condemnation award" below, shall be payable to the Association, and the provisions of this Article XII shall apply.

Section 12.02 Condemnation of a Unit. If a Unit is acquired by condemnation, or if part of a Unit is acquired by condemnation leaving the Unit Owner with a remnant of a Unit which may not practically or lawfully be used for any purpose permitted by the Declaration, the award must compensate the Unit Owner for the Owner's Unit and its Allocated Interest in

the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interests are automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this section is thereafter a Common Element.

Section 12.03 Partial Condemnation. Except as provided in Section 12.02, if part of a Unit is acquired by condemnation, the award must compensate the Unit Owner for the reduction in value of the Unit and its Allocated Interest in the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) that Unit's Allocated Interests are reduced in proportion to the reduction in the size of the Unit, and (b) the portion of the Allocated Interests divested from the partially acquired Unit are automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interests.

Section 12.04 Common Element Condemnation. If part of the Common Elements is acquired by condemnation the portion of the award attributable to the Common Elements taken shall be paid to the Owners based on their respective interests in the Common Elements. Any portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the Owners of the Units to which that Limited Common Element was allocated at the time of acquisition.

Section 12.05 Repair, Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the applicable procedures contained in Article IX above, including those regarding Reconstruction Assessments.

Section 12.07 Notice of Condemnation; Representation. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Unit Owner and Mortgagee. The Association shall represent the Unit Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Condominium, and any condemnation proceeds shall be payable to the Association in trust and for the benefit of the Owners of affected Units and their Mortgagees, as their interests may appear. Each Unit Owner hereby appoints an officer or Board member or any duly constituted representative of the Association as his or her attorney-in-fact for the purpose of such representation. Should the Association not act on the Unit Owners' behalf in a condemnation process, the affected Unit Owners may individually or jointly act on their own behalf.

ARTICLE XIII MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Units in the Property. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Bylaws. Where indicated, these provisions apply only to "eligible holders," as hereinafter defined.

Section 13.01 Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Secretary of the Association stating the name and address of such holder, insurer, or guarantor and the Unit number (referred to in this Article as an "eligible holder"), will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- (c) any delinquency in the payment of Assessments or charges owed by a Unit Owner of a Unit subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible Mortgage holders, as required in Section 13.03.

Section 13.02 Effect of Declaration Amendments. No amendment of this Declaration shall be effective to modify change, limit or alter the rights expressly conferred upon Mortgagees in this instrument with respect to any unsatisfied Mortgage duly recorded unless the amendment shall be consented to in writing by the holder of such Mortgage. Any provision of this Declaration expressly conferring rights upon Mortgagees which is inconsistent with any other provision of said Declaration or the Bylaws shall control over such other inconsistent provisions.

Section 13.03 Consent to Significant Amendments. Other than any amendment of the Declaration by the Declarant under its reserved Special Declarant Rights, no amendment of the Declaration by the Association or the Unit Owners shall become effective without the vote or other proper written approval of sixty-seven percent (67%) of the Unit Owners and the written approval of at fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each first Mortgage owned), where the amendment affects any of the following:

- (a) voting rights;

- (b) Assessments, Assessment liens or the priority of Assessment liens;
- (c) reserves for maintenance, repair, and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common or Limited Common Elements, or rights to their use;
- (f) definitions of any Unit boundaries;
- (g) conversion or convertibility of Units into Common Elements or vice versa; expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
- (h) insurance or fidelity bonds;
- (i) leasing of Units;
- (j) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (k) a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage holder; restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- (l) termination of the Condominium after substantial destruction or condemnation occurs; or
- (m) any provisions that expressly benefit Mortgage holders, insurers, or guarantors.

A Mortgagee which fails to respond within sixty (60) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered by certified or registered mail, return receipt requested.

Section 13.04 Actions Requiring Owner and Mortgagee Consent. The Association shall not, without the written approval of sixty-seven percent (67%) of the Unit Owners and the written approval of at fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each first Mortgage owned), take any action (other than actions which are necessary or appropriate to the exercise of a Special Declarant Right) which:

- (a) changes the Allocated Interest or obligations of any affected Unit for the purpose of (i) levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each

Unit in the Common Elements provided, that no such approval shall be required for changes described in Section 14.01(a);

(b) subdivides, partitions or relocates the boundaries of any affected Unit or the Common Elements or Limited Common Elements;

(c) by act or omission, would abandon or terminate the Project or the condominium regime, provided that the Eligible Mortgagee approval required in this case shall be sixty-seven percent (67%);

(d) by act or omission, would abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subparagraph);

(e) uses hazard insurance proceeds for losses to any Property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such Property;

(f) imposes any restriction on the right of a Unit Owner of an affected Unit to sell or transfer his or her Unit;

(g) changes the votes in the Association allocated by this Declaration; or

(h) would constitute an election not to repair or replace the Common Elements after substantial destruction or a substantial taking in condemnation, except as permitted under Articles XI or XII.

A Mortgagee which fails to respond within thirty (30) days of a written request to approve an action shall be deemed to have approved the action if such request was delivered by certified or registered mail, return receipt requested.

Section 13.04 Other Provisions for Eligible Mortgagees.

(a) Eligible Mortgagees, jointly or singly, may pay taxes or other charges, which are in default and which may or have become a charge against any of the Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. Eligible Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Eligible Mortgagees shall be entitled to cure any delinquency of the Unit Owner encumbered by the Eligible Mortgagee's Mortgage in the payment of Assessments of which the Eligible Mortgagee has received notice under Section 9.09. Above. In such event, the Eligible Mortgagee shall be entitled to obtain a release of the lien associated with the delinquent Assessment(s).

**ARTICLE XIV
AMENDMENT AND ENFORCEMENT**

Section 14.01 Amendments.

(a) The Condominium Plat and portions of this Declaration affected thereby shall be amended (i) by the Board of Directors, whenever there occurs a change in the square footage of a Unit and the total square footage of the Project due to engineering and/or construction variations referred to in Section 4.04, provided that such change, together with any prior changes, does not result in an adjustment in such square footage (positive or negative) exceeding two percent (2%); or (ii) in other cases, as provided in subsection (b) of this Section.

(b) This Declaration may be amended at any time by the Declarant in the exercise of any Development Right or prior to the conveyance of the first Unit to any Unit Owner other than the Declarant, or otherwise by an amendment in writing signed by the Unit Owners (including the Declarant) representing a combined Allocated Interest which exceeds two-thirds (66-2/3%). Notwithstanding the foregoing, no amendment shall:

- (1) terminate this Declaration or purport to terminate the Condominium, or
- (2) reduce the parking spaces available for a Unit below the minimum parking requirements established and in effect from time to time by the City for that Unit (including any visitor parking spaces allocated to that Unit); or
- (3) substantially impair access to and/or from any Unit without the written consent of the Unit Owner of that Unit, or
- (4) alter existing Unit boundaries or Limited Common Areas, except as otherwise expressly permitted under this Declaration, or
- (5) alter the permitted use of the Commercial Units without the written consent of the Unit Owner(s) of the Unit(s).

In addition, all amendments must comply with Section 13.03, requiring certain consents of Mortgagees.

Section 14.02 Execution, Recording. Amendments to the Declaration required by the Act to be recorded by the Association shall be in writing and shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Amendments shall become effective at the time of recording in the real estate records of the County Clerk of Bernalillo County, New Mexico.

Section 14.03 Challenge to Validity. No action to challenge the validity of an amendment adopted by the Association pursuant to this Article may be brought more than one year after the amendment is recorded.

Section 14.04 Special Declarant/Development Rights. No amendment may restrict, eliminate, or otherwise modify any Special Declarant or Development Right provided in the Declaration (nor otherwise hinder the business activities or expectations of, or benefits provided hereunder to, the Declarant) without the consent of the Declarant and any Mortgagee of record (excluding Mortgagees of units owned by persons other than the Declarant) with a security interest in the Special Declarant or Development Right or in any real property subject thereto.

Section 14.05 Material Amendments; Mortgagee Consent. Any amendment (other than an amendment necessary to exercise a Special Declarant right) to a provision of this Declaration establishing, providing for, governing or regulating the following (all of which shall be deemed "Material Amendments") shall require the consent of fifty-one percent (51%) of the Eligible Mortgagees: voting rights; Assessments, Assessment liens or the priority of Assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common or Limited Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium; insurance or fidelity bonds; leasing of Units; imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; a decision by the Association to establish self-management if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage holder; restoration or repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or any provisions that expressly benefit Mortgage holders, insurers, or guarantors. A Mortgagee which fails to respond within thirty (30) days of a written request to approve an amendment shall be deemed to have approved the request if such request was delivered by certified or registered mail, return receipt requested.

Section 14.06 Enforcement.

(a) In the event a Unit Owner is in violation or breach of any provision of this Declaration, and such Unit Owner fails to cure the breach or violation within twenty (20) days of the date Unit Owner is sent written notice by certified mail return receipt requested setting forth the nature of the breach or violation of this Declaration, then Declarant or the Board or a representative of the Board shall have the right to enter upon the Unit or Units where the breach or violation exists, and without further notice may summarily abate, correct, remove any thing or condition or take such other action as may be necessary to cure the violation or breach of any provision of this Declaration. In the event it is necessary for Declarant, the Board or representative thereof to incur any expense to cure the violation or breach of such provision hereof, Unit Owner shall be responsible of all costs of the enforcement action, including attorneys fees. Declarant or the representative may obtain an injunction against any

person violating the provisions of this Declaration or to seek recovery for damages or any other remedy that may be available to them in law or equity.

(b) Failure to comply also shall be grounds for an action to recover sums due for damages, or injunctive relief, or both, maintainable by the aggrieved Owner on his own against the party (including an Owner or the Association) failing to comply.

(b) All questions of interpretation and construction of terms of this Declaration shall be resolved by the Board.

(c) In any legal or equitable proceeding directed at securing compliance with this Declaration, the losing party shall pay the attorneys' fees of the prevailing party, in such amount as may be fixed by the court acting in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

(d) The failure of the Board in any one or more instances to insist upon the strict performance of this Declaration, of the Bylaws, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board of any assessment from an Owner, with knowledge of any such breach shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

ARTICLE XV GENERAL PROVISIONS

Section 15.01 Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

To the extent, if at all, that Section 56-7-1 NMSA 1978 applies to the foregoing agreement to indemnify and other such agreements contained in this Declaration, such agreement shall not require that the Association indemnify, hold harmless, insure or defend any officer or director, including the officer's or director's employees or agents, against liability, claims, damages, losses or expenses, including attorney 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.

Section 15.02 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision of this Declaration, which shall remain in full force and effect.

Section 15.03 Right of Entry. The Association shall have the right to enter into any Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Unit Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event a Unit Owner fails or refuses to cure the condition upon request by the Board.

Section 15.04 Inspection of Books and Records. Owners, Mortgagees, insurers and guarantors of any Mortgage on any Unit shall be entitled to inspect at all reasonable hours of weekdays (or under other reasonable circumstances) all of the books and records of the Association including current copies of this Declaration, Bylaws and other rules governing the Condominium, and other books, records and financial statements of the Association (within a reasonable time following request). Any Owner or any holder, insurer or guarantor of a first Mortgage to receive, upon written request and at no cost, an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association. Upon written request of any holder, insurer or guarantor of a first Mortgage at no cost to the party so requesting (or if this project contains fewer than fifty (50) Units, upon the written request of the holders of fifty-one percent (51%) or more of first Mortgages at their expense if an audited statement is not otherwise available), to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

Section 15.05 Dispute Resolution.

(a) *Initial Mediation.* The parties hope there will be no disputes arising out of their relationship. To that end, each commits to cooperate in good faith and to deal fairly in performing its duties under this Declaration in order to accomplish their mutual objectives and avoid disputes. But if a dispute arises, the parties agree to resolve all disputes by the following alternate dispute resolution process: (a) the parties will seek a fair and prompt negotiated resolution, but if this is not successful, (b) all disputes shall be resolved by binding arbitration, provided that during this process, (c) at the request of either party made not later than forty-five (45) days after the initial arbitration demand, the parties will attempt to resolve any

dispute by nonbinding mediation (but without delaying the arbitration hearing date). The parties confirm that by agreeing to this alternate dispute resolution process, they intend to give up their right to have any dispute decided in court by a judge or jury.

(b) *Binding Arbitration.* Any claim between or among any party subject to this Declaration (including without limitation, the Declarant, Board or Association officers, Unit Owners, or their employees or agents) arising out of or relating to this Declaration, a Unit or Units, the Condominium or the Association, shall be determined by Arbitration in the county in which the Condominium is located commenced in accordance with the New Mexico Uniform Arbitration Act; provided, that the total award by a single arbitrator (as opposed to a majority of the arbitrators) shall not exceed \$50,000, including interest, attorneys' fees and costs. If any party demands a total award greater than \$50,000, there shall be three (3) neutral arbitrators, at least one (1) of whom shall be an attorney with at least fifteen (15) years' experience in commercial or real estate law and shall reside in Bernalillo County, New Mexico. If the parties cannot agree on the identity of the arbitrator(s) within ten (10) days of the arbitration demand, the arbitrator(s) shall be selected by designated by the chief judge of the Second Judicial District Court in Albuquerque, New Mexico. The arbitrator(s) shall determine whether a claim is covered by this Section. All statutes of limitations which would otherwise be applicable shall apply to any arbitration proceeding hereunder.

(c) *Hearing; Law; Appeal Limited.* The arbitrator(s) shall take such steps as may be necessary to hold a private hearing within ninety (90) days of the initial demand for arbitration and to conclude the hearing within three (3) days; and the arbitrator(s) written decision shall be made not later than fourteen (14) calendar days after the hearing. The foregoing time limits have been provided in order to expedite the proceeding, but they are not jurisdictional, and the arbitrator(s) may for good cause grant reasonable extensions or delays, which shall not affect the validity of the award. The written decision shall contain a brief statement of the claim(s) determined and the award made on each claim. In making the decision and award, the arbitrator(s) shall apply applicable substantive law. Absent fraud, collusion or willful misconduct by an arbitrator, the award and decision shall be final, and the judgment may be entered in any court having jurisdiction thereof. The arbitrator(s) may award injunctive relief or any other remedy available from a judge, including without limitation joinder of parties or consolidation of this arbitration with any other involving common issues of law or fact or which may promote judicial economy; but shall not have the power to award punitive or exemplary damages; or to award attorneys' fees and costs to the prevailing party. If three arbitrators are appointed in the proceeding, the decision and award of the arbitrators need not be unanimous; rather, the decision and award of two arbitrators shall be final.

(d) *Not Applicable to Assessment Liens.* This Section shall not apply to the enforcement of liens for Assessments.

(e) All claims not subject to mandatory arbitration as provided above shall be subject to resolution by a court of competent jurisdiction. The parties subject to this Declaration (as described above) hereby irrevocably submit themselves in any suit, action, or proceeding arising out of or relating to Condominium and this Declaration, or the performance thereof by either party, to the jurisdiction of the Second Judicial District Court of the State of New Mexico. The

parties further agree that proper venue for such suits lies within Bernalillo County, New Mexico. Finally, the parties hereby agree by contract that in any court or arbitration proceeding between the parties, the court (arbitrator) may award reasonable attorneys' fees, litigation expenses, and court (or arbitration) costs incurred in favor of the prevailing party.

Section 15.06 Conveyances; Notice Required. The right of a Unit Owner to sell, transfer, or otherwise convey the Unit shall not be subject to any right of approval, disapproval, first refusal, or similar restriction by the Association or the Board, or anyone acting on their behalf. An owner intending to sell a Unit shall deliver a written notice to the Board, at least two (2) weeks before closing, specifying: the Unit to be sold; the name and address of the Purchaser, of the closing agent, and of the title insurance company insuring the Purchaser's interest; and the estimated closing date. The Board shall have the right to notify the Purchaser, the title insurance company, and the closing agent of the amount of unpaid assessments and charges outstanding against the Unit, whether or not such information is requested. It is understood, however, that a violation of this Section shall not invalidate a sale, transfer or other conveyance of a Unit which is otherwise valid under applicable law.

Section 15.07 Delivery of Notice. Any notice permitted or required to be delivered under the provisions of this Declaration or the Bylaws may be delivered either personally or by mail. If delivery is made by mail, any such notice shall be deemed to have been delivered twenty-four (24) hours after a copy has been deposited in the United States mail, postage prepaid, for first class mail, addressed to the person entitled to such notice at the most recent address given by such person to the Board, in writing, for the purpose of service of such notice, or to the most recent address known to the Board. Notice to the Owner or Owners of any Unit shall be sufficient if mailed to the Unit of such person or persons if no other mailing address has been given to the Board by any of the persons so entitled. Mailing addresses may be changed from time to time by notice in writing to the Board. Notice to be given to the Board may be given to Declarant until the Board has been constituted and thereafter shall be given to the President or Secretary of the Board.

ARTICLE XVI SPECIAL DECLARANT RIGHTS, DEVELOPMENT RIGHTS

Section 16.01 Special Declarant Rights. The following Special Declarant Rights apply to the Property:

(a) Declarant shall have the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the Units by sale, lease or otherwise.

(b) Each Unit Owner by accepting a deed to a Unit hereby acknowledges that the activities of Declarant, and/or activities of another Unit Owner undertaken with the consent of Declarant and not in violation of the Condominium Documents or the Act, may temporarily constitute an inconvenience or nuisance to the Unit, and each Unit Owner hereby consents to such inconvenience or nuisance; provided, that such inconvenience or nuisance shall not

materially interfere with such Unit Owner's use and enjoyment of the Unit, other than on a temporary basis.

(c) This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Unit by a purchaser from Declarant to establish upon or within that Unit additional licenses, easements, reservations and rights-of-way to itself, to utility companies or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property.

(d) Declarant may use any Units owned by Declarant as model complexes or sales or leasing offices. Declarant need not seek or obtain Association approval of any improvement or building constructed or placed on any portion of Property by Declarant. Declarant shall be entitled to the nonexclusive use of the Common Elements and any facilities thereon, without further cost, for access, ingress, egress, use or enjoyment, to show the Property to its prospective purchasers or lessees and dispose of the Property as provided herein.

(e) Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property.

(f) Declarant shall have the right to make the Condominium subject to a master association under 47-7B-20 NMSA 1978.

(g) Declarant shall have the right to exercise Development Rights, if any, under this Declaration and the Act.

Nothing in this Declaration shall limit, and no Unit Owner or the Association shall do anything to interfere with, the exercise of the Special Declarant Rights reserved herein.

Each Unit Owner grants, by acceptance of the deed to such Unit Owner's Unit, an irrevocable, special power of attorney, coupled with an interest, to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under the section, and its Development Rights, including but not limited to any amendment or supplementation of this Declaration and the Condominium Plat or Plan undertaken to exercise such rights. Notwithstanding any other provision of the Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Section shall be effective. Special Declarant Rights, including Development Rights, shall be exercised not later than the seventh (7th) anniversary of the original recording of this Declaration in the official records of Bernalillo County, New Mexico.

Section 16.02 Development Rights. Declarant, for itself and any successor Declarant, hereby reserves the following Development Rights:

(a) *Parking Assignment.*

(1) The total number of parking spaces which are anticipated for this Condominium, and the general locations of such parking spaces, are depicted on the Condominium Plat. Declarant may assign spaces not initially assigned if and to the extent Declarant deems necessary or appropriate to assure the orderly, equitable use of parking by the Unit Owners.

(2) If Declarant elects to reallocate parking or storage previously allocated to Units still owned by Declarant, Declarant shall comply with the provision of Section 16.03; such reallocation expressly being authorized by and in compliance with this Declaration.

(b) *Subdivision and Combination.* Declarant shall have the right to subdivide or combine Units (owned by Declarant) or convert Units (owned by Declarant) into Common Elements. Whenever Declarant exercises a Development Right to subdivide, combine or convert a Unit previously created into additional Units, Common Elements, or both:

(1) If Declarant converts the Unit entirely to Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of that Unit among the other Units as if that Unit had been taken by condemnation under Article XII.

(2) If Declarant subdivides the Unit into two or more Units, whether or not any part of the Unit is converted into Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of the Unit among the Units created by the subdivision in a reasonable and equitable manner prescribed by the Declarant.

(3) If Declarant combines two or more of the Units, the amendment to the Declaration must reallocate to the new Unit all of the Allocated Interests formerly allocated to the Units so combined.

(c) *No Withdrawal of Property.* No Property or Improvements may be withdrawn from the Condominium except as a direct consequence of a reallocation due to destruction or condemnation affecting the Condominium.

(e) *Boundaries of Limited Common Elements.* Declarant shall have the right to establish, expand, contract or otherwise modify the boundaries of any Limited Common Element allocated to a Unit; provided, that the prior consent of the Unit Owner will be required.

Section 16.03 Exercise of Development Rights; Limitations. The Development Rights of Declarant shall be exercised, and are subject to certain restrictions and limitations, as follows:

(a) *Procedure for Exercise of Development Right.* To exercise any Development Right reserved under Section 16.01, Declarant shall prepare, execute, and record an

amendment to the Declaration under Article XIV and comply with Section 47-7B-10 of the Act.

(b) *Time, Scope of Exercise.*

(1) Any Development Right may be exercised with respect to different Properties at different times.

(2) No assurances are made as to final boundaries of such Properties or as to the order in which those Properties may be subjected to the exercise of each Development Right.

(3) Even though a Development Right is exercised in any portion of the Property subject to that right, that right need not be exercised in all or in any other portion of the remainder of that Property.

(c) *Termination of Development Rights.* Except as otherwise provided in this Declaration, the foregoing Development Rights shall continue so long as Declarant is completing improvements which are within or may be added to this Condominium, or Declarant owns any Units, or any Special Declarant Rights remain in effect; provided, that Declarant may voluntarily terminate any or all of such Rights at any time by recording an amendment to the Declaration, which amendment specifies which Development Right is thereby terminated.

(d) *Liability for Damage.* The Declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the Condominium, of any portion of the Condominium damaged by the exercise of rights reserved by Declarant pursuant to or created by this Declaration or the Act.

(e) *Declarant's Easements.* Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights or Development Rights, whether arising under the Act or reserved in the Declaration.

Section 16.04 Assignments of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of the Declarant set forth in this Declaration may be assigned by the Declarant to any person, corporation or association which will assume the duties of Declarant as to the rights, powers and reservations assigned. Upon the assignment of any rights, powers and duties of the Declarant, the assignee, to the extent set forth in the assignment, shall have the same rights, obligations and duties of the Declarant herein. Such assignment shall not reduce an obligation nor enlarge a right beyond that contained herein. Any assignee of Declarant shall likewise have the right to assign any such rights, powers and reservations to the same extent as if such assignee were the original Declarant hereunder. No such transfer shall be effective unless it is set forth in a written instrument signed by the Declarant and duly recorded in the records of the County Clerk of Bernalillo County, New Mexico.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration of Condominium and of Covenants, Conditions and Restrictions For Bell Trading Post Condominium, this ____ day of September, 2008.

DECLARANT:

FAMILY HOUSING DEVELOPMENT
CORPORATION

By _____
Ricky E. Davis, President

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

This instrument was acknowledged before me on September ____, 2008, by Ricky E. Davis, President of Family Housing Development Corporation, a New Mexico nonprofit corporation, as Declarant.

Notary Public

My commission expires:

EXHIBIT A
Description of Real Estate

TRACT A-1, BELL TRADING POST, as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico on June 28, 2007 in Book 2007C, Page 17 and containing 1.0336 acres more or less.

EXHIBIT B
Condominium Plat

[BEGINNING ON FOLLOWING PAGE]

[INSERT CERTIFICATES OF SUBSTANTIAL COMPLETION HERE]

EXHIBIT C
Units and Allocated Interests

	<u>Unit Number</u>	<u>Floor Space</u>	<u>Allocated Interest (%)</u>
	102	719	3.77%
	103	721	3.78%
	104	622	3.26%
	105	668	3.50%
	106	736	3.86%
	107	641	3.36%
	108	874	4.58%
	109	612	3.21%
	110	648	3.40%
	111	814	4.27%
	201	749	3.93%
	202	1,009	5.29%
	112	3,583	18.78%
	113	1,486	7.79%
	114	1,788	9.37%
(Commercial)	101	<u>3,405</u>	<u>17.85%</u>
		19,075	100.00

EXHIBIT D
Articles of Incorporation of Association

EXHIBIT E
Bylaws of Association

BELL TRADING POST LOFTS CONDOMINIUM

**DECLARATION OF CONDOMINIUM
AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

DATED: _____, 2008

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EXHIBITS

- Exhibit A -- Description of Real Estate
- Exhibit B -- Condominium Plat, Statement of Declarant, Certificate of Completion
- Exhibit C -- Units and Allocated Interests
- Exhibit D -- Articles of Incorporation of Association
- Exhibit E -- Bylaws of Association

**AMENDMENT NO. 1 TO
DECLARATION OF CONDOMINIUM AND OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BELL TRADING POST LOFTS CONDOMINIUM**

This first Amendment to the DECLARATION OF CONDOMINIUM AND OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of March 25, 2009 by the undersigned owners of Units in the Condominium.

RECITALS

A. Bell Trading Post Lofts Condominium is a condominium located on that certain parcel of real property in Albuquerque, Bernalillo County, New Mexico, more particularly described in the attached Exhibit A created by the Declaration of Condominium and of Covenants, Conditions and Restrictions recorded on September 18, 2008 as Document No. 2008-103469 (the "Declaration") of the real estate records of the Bernalillo County, New Mexico.

B. The Declaration contains certain restrictions regarding leasing of Units which do not comport with the current interpretation of requirements of the U.S. Department of Housing and Urban Development ("HUD"), which requirements must be satisfied as a condition of obtaining HUD approval of the project.

C. The Declaration may be amended with the approval of Unit Owners (including the Declarant) representing a combined Allocated Interest which exceeds two-thirds (66-2/3%).

D. Declarant is willing to amend the Declaration as requested by HUD.

E. Capitalized terms used but not defined in this Amendment shall have the meanings assigned to them in the Declaration.

NOW, THEREFORE, The first paragraph of Section 6.08 of the Declaration is hereby amended as follows:

The term "lease", as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. No Unit Owner shall be permitted to lease or rent all or any portion of his Unit except as provided in this Section. The leasing or rental of Units may be subject to restriction or prohibition, including restrictions or prohibitions imposed under applicable law, regulations and guidelines of HUD/FHA, VA, FNMA, FHLMC and similar bodies. Subject to such restrictions and prohibitions, a Unit Owner shall have the right to lease his Unit under the following conditions:


- (a) all leases shall be in writing;
- (b) all leases shall provide that the terms of the lease and the lessee's occupancy of the Unit shall be subject in all respects to the provisions of this

Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease; and

(c) no residential lease shall be for a term greater than six (6) months.

Except as modified herein, the Declaration shall remain in full force and effect.

FAMILY HOUSING DEVELOPMENT CORPORATION,
a New Mexico nonprofit corporation

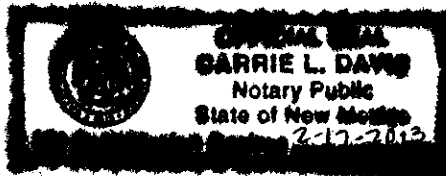
By 
Ricky E. Davis, President

BELL TRADING POST OFFICE, LLC

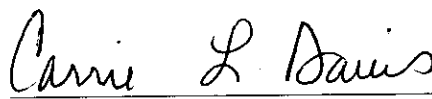
By 
Lee S. Blaugrund, Member


LEE S. BLAUGRUND

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)



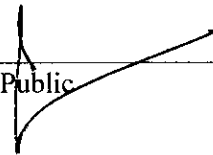
This instrument was acknowledged before me on April 1, 2009 by Ricky E. Davis, as President of Family Housing Development Corporation, a New Mexico nonprofit corporation.


Notary Public

My commission expires:
2-17-2013

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on April 12th by Lee S. Blaugrund, member of Bell Trading Post Office, LLC, a New Mexico limited liability company.

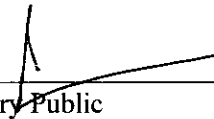


Notary Public

My commission expires:
12/1/12

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

This instrument was acknowledged before me on April 12th, 2009, by Lee S. Blaugrund.



Notary Public

My Commission Expires:
12/1/12

CONSENT OF LENDER

The undersigned as mortgagee under that certain Construction Mortgage dated June 22, 2006, between FAMILY HOUSING DEVELOPMENT CORPORATION, Declarant under the foregoing Declaration, as mortgagor and CHARTER BANK, a federal savings bank, as mortgagee, and recorded on June 27, 2006, as Document No. 2006094684 in the real estate records of Bernalillo County, New Mexico, as modified by that certain Change in Terms Agreement dated November 10, 2008, hereby consents to the execution and recording of the foregoing Amendment No. 1 to Declaration of Condominium and of Covenants, Conditions and Restriction for Bell Trading Post Lofts Condominium.

Dated: March 25, 2009

CHARTER BANK

By: Scott K. Browning
Senior Vice President,

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

This instrument was acknowledged before me on March 25, 2009, by Scott K. Browning SVP of Charter Bank, a federal savings bank.

Joyce Ann Walker
Notary Public

My commission expires:
August 14, 2009

EXHIBIT A
Description of Real Estate

TRACT A-1, BELL TRADING POST, as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico on June 28, 2007 in Book 2007C, Page 17 and containing 1.0336 acres more or less.