

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
LAFAYETTE PLACE CONDOMINIUM**

This Declaration of Covenants, Conditions and Restrictions for Lafayette Place Condominium, hereinafter called "Declaration," is made and executed in Albuquerque, County of Bernalillo, State of New Mexico, this 29<sup>th</sup> day of May, 1985, by PRESLEY COMPANY OF NEW MEXICO, a New Mexico corporation, hereinafter called "Declarant," pursuant to the provisions of the Condominium Act of the State of New Mexico, Sections 47-7A-1 to 47-7D-20, New Mexico Statutes Annotated (1978 Comp.).

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain real property, located in Albuquerque, Bernalillo County, New Mexico, and more particularly described as follows, to-wit:

*Declarant to sign*

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-149), and being more particularly described as follows:  
 BEGINNING at the northeast corner of Phase I, said point being common to the northeast corner of the aforementioned Tract B;  
 THENCE S 00° 28' 59" E, 230.97 feet to a point of curvature;  
 THENCE southeasterly, 38.95 feet along a curve to the left, whose radius is 25.00 feet through a central angle of 89° 18' 39" to a point of tangency;  
 THENCE S 89° 45' 37" E, 6.95 feet to a point;  
 THENCE S 00° 03' 27" W, 102.87 feet to a point;  
 THENCE N 89° 43' 27" W, 155.98 feet to a point;  
 THENCE N 61° 12' 06" W, 44.10 feet to a point;  
 THENCE N 33° 43' 30" W, 12.02 feet to a point;  
 THENCE N 11° 16' 33" E, 40.00 feet to a point;  
 THENCE N 83° 10' 53" W, 15.01 feet to a point;  
 THENCE N 89° 43' 27" W, 78.00 feet to a point;  
 THENCE N 06° 53' 54" W, 48.04 feet to a point;  
 THENCE N 00° 16' 33" E, 38.50 feet to a point;  
 THENCE N 05° 09' 52" W, 31.84 feet to a point;  
 THENCE N 00° 16' 33" E, 21.50 feet to a point;  
 THENCE N 48° 28' 58" W, 48.54 feet to a point;  
 THENCE N 00° 16' 33" E, 115.13 feet to a point;  
 THENCE S 89° 45' 37" E, 296.80 feet to the point of beginning;

and

**WHEREAS**, Declarant is the owner of certain condominium home buildings and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises, which property constitutes a "Condominium Project" under the terms of the provisions of the Condominium Act of the State of New Mexico, and it is the desire and the intention of the Declarant to divide the project into condominium units, and to sell and convey the same to various purchasers, subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

**WHEREAS**, Declarant desires and intends by filing this Declaration to submit the above described property and the condominium home buildings and other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the aforesaid Act as a Condominium Project and to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said condominium and the owners thereof.

**NOW, THEREFORE**, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium units, and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. **Definitions.** Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

A. "Declarant" shall mean PRESLEY COMPANY OF NEW MEXICO, a New Mexico corporation, which has made and executed this Declaration, its successors in interest or its assigns.

B. "Declaration" shall mean this instrument by which LAFAYETTE PLACE CONDOMINIUM is established as provided for under the New Mexico Condominium Act.

C. "Project" shall mean the entire parcel of real property referred to in this Declaration to be divided into condominium units and the Common Area, including all structures thereon.

D. "Location and Floor Plan" shall mean the site and floor plans of LAFAYETTE PLACE CONDOMINIUM prepared by ESPEY, HUSTON & ASSOCIATES, INC. filed in the office of the County Clerk of Bernalillo County, New Mexico contemporaneously herewith, with any amendments thereto.

E. "Phase I" shall mean that real property located in Bernalillo County, New Mexico, described on Page 1 hereof, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

F. "Phase II" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-1" to this Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

G. "Phase III" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-2" to this Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

H. "Phase IV" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-3" to this Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

I. "Phase V" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-4" to this Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

J. "Unit" or "condominium unit" shall mean the elements of the condominium which are not owned in common with the owners of other condominium units in the Project as shown on the plat. The boundary lines of each unit are as described in §47-7B-2, N.M.S.A. (1978), in Paragraph 3 of this Declaration, and are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and including both the portions of the building so described and the space so encompassed.

K. "Common Area" shall mean all land and all portions of the property not located within any unit and includes, but without limitation to, conduits, wires and other utility installations to the outlets, common walls, the interior surfaces thereof, regardless of location, stairways, walkways, gardens, walkway balconies, offices, all installations of power, light, gas and water existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

L. "Limited Common Areas" means common areas shown or designated as porch, storage unit, courtyard, covered carport or Limited Common Area on the Location and Floor Plan, which areas are allocated to and reserved for the use of certain units to which they are appurtenant to the exclusion of the use by others. The use of the limited common areas shall be further controlled by the provisions of this Declaration and rules and regulations promulgated by the Association of Unit Owners.

M. "Condominium" shall mean the real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

N. "Unit Owner" or "Owner" shall mean the person or persons with an ownership interest in a condominium unit in the Project.

O. "Association" or "Association of Unit Owners" means all of the Unit Owners acting as a group in accordance with the Bylaws and Declaration.

P. "Board" or "Executive Board" shall mean the Board of Directors of the Lafayette Place Condominium Owners Association or an Executive Board elected therefrom acting on behalf of the Association.

Q. "Common Expenses" includes all sums lawfully assessed against the Unit Owners by the Association of Unit Owners; expenses of administration, maintenance, repair or replacement of the Project and of common areas and facilities; and expenses declared to be common expenses and items of expense referenced as such in this Declaration.

R. "Person" means an individual, corporation, partnership, combination, association, trustee, or other legal entity.

2. Buildings. All units have access to the common area of the Project.

The buildings and the units therein contained are set out as to square footage, dimensions and location with respect to the boundary of the land submitted to the Act hereby, the elevation of the floors and ceilings defining the units and the designation or unit number by which each unit is designated on the Location and Floor Plan attached hereto as Exhibit "A" and made a part hereof.

Each unit consists of a living room, dining room, kitchen and one-half bath on the ground floor and two bedrooms, one full bath and one three-quarter bath on the second floor, containing a total of 1,043 square feet, more or less. Also appurtenant to each unit is a porch, storage unit, courtyard and one-car carport space, which are limited common area as herein defined.

Phase I consists of thirty-four (34) units located in three (3) buildings, and a swimming pool facility.

Phase II consists of thirty-six (36) units located in three (3) buildings.

Phase III consists of twenty-eight (28) units located in three (3) buildings.

Phase IV consists of forty (40) units located in four (4) buildings.

Phase V consists of forty-six (46) units located in four (4) buildings.

The maximum number of units which Declarant reserves the right to create is one hundred eighty-four (184). The units contained in Phases II, III, IV and V each have appurtenant areas designated as porches, storage units and covered carports, which are contemplated to be allocated as limited common areas and will be so allocated when Phases II, III, IV and V are added.

3. Boundaries and Composition of Units. The boundaries of each unit shall be as described in S47-7B-2, N.M.S.A. (1978), and as shown on the attached Location and Floor Plan pertaining thereto and are and shall be the interior finished surfaces of the perimeter walls, floors and ceilings. Each unit includes both the portions of the building as described and the space so encompassed, excepting the common facilities located therein. The individual ownership of each unit shall further include the interior construction, fixtures, equipment and appliances which are designed and intended solely for the benefit of and to exclusively serve the particular unit in or to which the same are located or attached, and which are not designed or intended for the benefit, support, service, use or enjoyment of any other unit, such as, for example, the non-bearing interior room walls and other non-bearing and non-supporting interior partitions, the interior floor finish (including carpeting and other floor covering), the finished walls and ceilings, the stairs, the closets, cabinets, and shelves, the sills adjoining the walls, the individual lighting and electrical fixtures and appliances, the individual kitchen and bathroom fixtures, equipment, appliances and plumbing, the individual furnaces and air conditioning appliances and equipment, all glass or glass plate in any window or forming part of any wall in or of the unit (as hereinafter

more particularly provided), all interior and exterior doors of the unit, and each unit shall be assigned at least one (1) auto parking space for the exclusive use of the Unit Owner or Owner's designee.

**4. Common Areas and Facilities.**

A. The Common Areas and Facilities shall consist of all of the land described herein as being submitted to the Act together with all improvements thereon except the individual units as defined herein, and such Common Areas and Facilities shall include all of such land herein, common storage areas, the foundations, bearing walls and columns, carports, common parking areas, porches, yards, gardens, the compartments or installation of central services such as power, light, electricity, pumps, public utility lines, floors and ceilings (other than the finished interior surfaces thereof located within the units), perimeter walls of units (other than the finished interior surfaces thereof located within the units), structural and supporting parts of all buildings, the intermediate ceiling and floor structure in each unit separating the first and second level thereof (other than the finished surfaces thereof), outside walks and driveways, and all structures, fixtures, facilities, equipment and appliances which are designed and intended for the common and mutual use or benefit of each unit and the space occupied by same, and in general, all other portions of the Project property except the individual units and the particular elements thereof which are to be individually owned, as declared and established in this Declaration. Reference is hereby made to the Act for further definition of the "Common Areas and Facilities."

B. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

5. **Exclusive Ownership and Possession by Owner.** The legal estate of each Unit Owner will be held in fee simple. Each Owner shall be entitled to exclusive ownership and possession of his unit. Each Owner shall be entitled to an undivided interest in the Common Area. The formula to be used to allocate the allocated interests among units in the Condominium Project shall be the proportionate square footage of each individual unit as compared to the total square footage of all units in the Project. The total percentage shall be one hundred percent (100%). Except as provided in Paragraph 7 hereof, such individual interests shall not be altered without the consent of all Owners and of each institutional holder of a first mortgage lien on any unit in the Project expressed in an amended declaration duly recorded. Each undivided interest in the Common Area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners.

An Owner shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors bounding his unit, nor shall the Owner be deemed to own the utilities running through his unit, which are utilized for, or serve more than one unit, except as a tenant in common with the other Owners. An Owner, however, shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors bounding his unit and shall be responsible for the replacement, and the cost thereof, of any window, door or wall glass which is part of his unit. Each Owner shall also be responsible for landscaping and maintaining that part of the Limited Common Area which is the courtyard appurtenant to such Owner's unit. Any window drapes, curtains or coverings, which are visible from outside the unit, must be of a reasonable and acceptable nature and appearance, in keeping with the general standards of the Project.

6. **Owner's Right to Sell.** The right of a Unit Owner to sell, transfer, or otherwise convey the Owner's unit will not be subject to any right of first refusal or any similar restriction in favor of the Owners Association.

7. **Additional Construction and Percentage of Undivided Interest and Reservations.** Declarant is the owner of additional lands contiguous to the lands herein described. Inclusion of Phases II, III, IV and V in the total project is contemplated and expected, and this Declaration contemplates a unity of use and development with a subsequent phase. Accordingly, the Declarant and each Unit Owner covenant and agree to the reduction of the percentage of undivided interest as defined in Paragraph 5 above, conditioned upon further expansion of LAFAYETTE PLACE CONDOMINIUM and the

inclusion of additional common areas and facilities. Declarant reserves the right to file an Amended Declaration or Declarations which need be executed solely by Declarant, adding Phases II, III, IV and V to the Project at any time in the five (5) years following the filing date of this Declaration that Declarant elects to do so. Declarant does hereby except and reserve, for the benefit of Phases II, III, IV and V, rights-of-way, or ingress and egress, by vehicle or foot, on, upon and over the driveways and walks in this phase, and rights to connect with, make use of, and maintain and repair and replace utility lines, pipes, conduits, and drainage lines which may from time to time be along the driveways or other areas, and to grant such easements for roadways and utilities as are necessary to any addition to the Project.

In the event and at such time as units are added to the Condominium Project as provided in this paragraph, the formula to be used to reallocate the allocated interests among all units included in the condominium after the addition shall be the proportionate square footage of each individual unit as compared to the total square footage of all units in the Project. The percentage interest of each unit as thus calculated shall apply for all purposes, including the unit's interest in Common Areas, assessments and the Unit Owner's voting rights. The total percentage of all units shall always equal 100%.

It is the intention of the Declarant that after recording an amendment bringing Phases II, III, IV and V within the terms of this Declaration, (i) the Owners of units in Phases II, III, IV and V will have an equal right with Unit Owners in Phase I to the use of Common Areas; (ii) the Association shall have the right and the duty to maintain and administer all Common Areas located within Phases II, III, IV and V; and (iii) the Owners of units located in Phases II, III, IV and V shall be subject to assessment by the Association in the same manner as Unit Owners located in Phase I.

Declarant makes no assurances or representations that Phases II, III, IV and V shall ever be made subject to the Declaration.

In order to amend this Declaration to make Phases II, III, IV and V subject thereto, Declarant shall:

A. Execute and record in the office of the County Clerk of Bernalillo County, New Mexico, an amendment to this Declaration which shall comply with §47-7B-17, N.M.S.A. (1978).

B. File in the office of the County Clerk of Bernalillo County, New Mexico, floor plans for the new units to be made subject to this Declaration in accordance with the provisions of §47-7B-9, N.M.S.A. (1978).

C. Deliver to each Unit Owner and the Association a true and correct copy of the amendment to this Declaration executed pursuant to Section A of this Paragraph 7.

D. Deliver to each Unit Owner and the Association a schedule showing the percentage interest of each unit determined in accordance with the provisions of this paragraph after such amendment or amendments.

By acceptance of a deed to a unit, each Unit Owner thereby irrevocably appoints Declarant its attorney-in-fact to execute and record an amendment or amendments to this Declaration for the purposes specified in this Paragraph 7. Declarant may execute and record such amendment or amendments which shall effectively add Phases II, III, IV and V to the Project at any time during the five years next following the filing of this Declaration.

8. Removal. All Unit Owners may collectively remove the property from the provisions of the Condominium Act by an instrument to that effect duly recorded; provided that the holders of liens affecting any unit shall consent or agree by instrument duly recorded, and further provided that their liens be transferred to the percentage of the undivided interest of the debtor Unit Owner in the property. Upon removal of the property from the provisions of the Condominium Act, the property shall be deemed to be owned in common by the Unit Owners. The undivided interest in the property owned in common which shall appertain to each Unit Owner shall be the percentage of undivided interest previously owned by an Owner in the common areas and facilities.

Notwithstanding the foregoing, the prior written approval of each institutional holder of a first mortgage or its equivalent security interest on units in the Project will be required for the abandonment or termination of the Project except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty

or in the case of taking by condemnation or eminent domain. The written approval of the Veterans Administration shall also be required of a veteran purchaser with a loan guaranty.

9. Limitations on Use of Units and Common Area. The units and Common Area shall be occupied and used as follows:

A. No Owner shall occupy or use his unit, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessees or guests.

With the exception of a lender in possession of a condominium unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Unit Owner shall be permitted to lease his unit for transient or hotel purposes. No Unit Owner may lease less than the entire unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his unit.

B. There shall be no obstruction of the Common Area. Except in the case of designated storage areas, nothing shall be stored in the Common Area without the prior consent of the Board.

C. Nothing shall be done or kept in any unit or in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his unit or in the Common Area which will result in the cancellation of insurance on any unit or any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

D. No sign of any kind shall be displayed to the public view on or from any unit or the Common Area, without the prior consent of the Board.

E. Household pets shall be permitted but only in accordance with the Rules and Regulations controlling the Project and the use thereof, as those Rules and Regulations are promulgated and changed from time to time.

F. No noxious or offensive activity shall be carried on in any unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners.

G. Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

H. The Board is authorized to adopt rules governing the use of the common area which rules shall be furnished in writing to the Owners by the Board and there shall be no violation of those rules.

I. Parking shall be limited to vehicles not larger than a 1-ton pickup truck, and no recreational vehicles, travel trailers or boats shall be permitted.

J. None of the rights and obligations of the Owners created herein, or by the Deed creating the condominium unit shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners.

K. Notwithstanding anything to the contrary in this paragraph or elsewhere in this Declaration, the Declarant may maintain sales offices, management offices and models in units or on common elements in the condominium and may also maintain signs on the common elements advertising the condominium. Declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging its obligations or exercising its special declarant rights whether arising under the Condominium Act or reserved in this Declaration. Declarant reserves the right to do whatever is necessary or to override decisions of the Board or the Association to the extent required to carry out its obligations, duties and responsibilities in connection with the development and sale of the Project. This reservation shall be in effect for the first five (5) years immediately following the filing of this Declaration subject to the limitation provisions affecting this reservation of right provided in the Condominium Act.

10. **Easements.** A valid easement shall exist in each unit and in each portion of the Common Areas and Facilities for the benefit of each Owner, and each utility company for the installation, maintenance, repair, removal or replacement of any and all utility lines, pipes, wires, conduits, television cables, facilities and equipment serving the unit buildings or buildings as a whole or any individual unit, and the ownership of the units and interest in the Common Areas and Facilities shall be subject to such easements.

Each unit is conveyed together with an easement for the continuance of all encroachments by the unit or any adjoining units or common elements existing as the result of construction of the building or which may come into existence hereafter as a result of settling or shifting of the building wherefore a result of repair or restoration of the building or of the unit, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board. Each unit is conveyed subject to easements in favor of adjoining units and in favor of the common elements for the continuance of all encroachments of such adjoining units or common elements of the unit, now existing as a result of construction of the buildings, or which may come into existence hereafter, as a result of repairing or restoration of the buildings or of any adjoining unit or of the common elements after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board.

11. **Owner's Obligation to Repair.** Each Owner shall at the Owner's expense keep the interior of his unit and its equipment and appurtenances in a clean and sanitary condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his unit. In addition to decorating and keeping the interior of the unit in good repair, the Owner shall be responsible for the maintenance, repair or replacement of any furnaces, air conditioners, plumbing fixtures, refrigerators, dishwashers, garbage disposals, ranges or other appliances that may be in, or connected with the unit.

The Owner shall also, at the Owner's own expense, keep any limited common area, and particularly the courtyard and carport space assigned to his unit, in an orderly and sanitary condition. No laundry or unsightly objects shall be placed or hung in public view on balconies, patios, decks, walkways or porches. The Board and Manager shall not be responsible to any Owner for loss or damage by theft or otherwise of articles which may be stored by the Owner in the limited common area, if any, or unit.

The Owner shall promptly discharge any lien which may hereafter be filed against his condominium unit.

12. **Prohibition Against Structural Changes by Owner.** An Owner shall not, without first obtaining written consent of the Board, make or permit to be made any structural alteration, improvement or addition in or to his unit or in or to the exterior of the buildings or other Common Area. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all Owners.

No unit in the Project may be partitioned or subdivided without the prior written approval of the holder of any first mortgage lien on such unit and of the Board of Directors and it is anticipated that such approval shall not be obtainable.

13. **Entry for Repairs.** The Board or its agents may enter any unit when necessary in connection with any maintenance, landscaping or construction for which the Board is responsible, or to make emergency or other necessary repairs which the Unit Owner has failed to perform. Such entry shall be made with as little inconvenience to the Owners as practicable.

14. **Association of Unit Owners and Reservation of Special Declarant Rights.**

A. Each Owner of any unit shall automatically be a member of the Lafayette Place Condominium Owners Association, and if owning more than one unit shall hold one membership for each unit so held by said Owner in the Association, which shall be the governing and administrative body for all Unit Owners for the protection, preservation, upkeep, maintenance, repair and replacement of the exterior of the Units and buildings, the Common Areas and Facilities and the government, operation and administration of the Project property as a whole and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership shall automatically cease. Upon any transfer of ownership of any unit, regardless of how accomplished, the new Unit Owner acquiring or succeeding to such ownership interest shall

likewise automatically succeed to such membership in such Association. No person other than an Owner may be a member of the Association.

B. During the first five (5) years of the existence of the Condominium Project immediately following the filing of this Declaration, the Declarant or persons designated by Declarant may appoint and remove the officers and members of the Executive Board of the Association. Notwithstanding the foregoing period provided for Declarant control, such control shall terminate no later than the earlier of:

- (1) 180 days after conveyance of ninety percent (90%) of the units to Unit Owners other than the Declarant;
- (2) two years after Declarant has ceased to offer units for sale in the ordinary course of business; or
- (3) five years after any development right to add new units was last exercised.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of that period, but in that event Declarant may require, for the duration of the period of Declarant control, that any actions of the Association or the Executive Board deemed by Declarant to have a significant effect on Declarant, as described in an instrument to be executed by Declarant and duly recorded with the County Clerk, be approved by Declarant before such actions become effective.

The election of members of the Executive Board or the appointment thereof shall be controlled by §47-7C-3, E, F and G, N.M.S.A. (1978).

15. Voting and Bylaws. At any meeting of the Owners, each Owner, including Declarant, shall be entitled to cast his or her vote for each unit owned in accordance with the percentages specified in Exhibit "C" attached hereto. Any Owner may attend and vote at any meeting duly called in person, or by an agent duly appointed by an instrument in writing signed by the Owner and filed with the Board or the Manager. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Board or the Manager, and shall be deemed revoked when the Board or the Manager shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium unit. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such person must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominium unit owned by Declarant and as provided in the Bylaws of the Association.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium unit against the Owner of the condominium unit covered by the mortgage, then and until the default is cured, the right of the Owner of such condominium unit to vote shall be transferred to the mortgagee recording the notice of default. The administration of the property is governed by the Bylaws, a true copy of which is annexed hereto, marked Exhibit "B," and incorporated herein by reference thereto. No modification of or amendment to the Bylaws shall be valid unless set forth in an amendment to the Declaration and the amendment duly recorded.

16. Meetings. The presence at any meeting of Owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the provisions of Paragraph 16 hereof, and at that meeting the presence of Owners holding in excess of thirty per cent of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may give notice to all the Owners in accordance with Paragraph 17 of an adjourned meeting, and, at that meeting, whatever Owners are present shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

A. Annual Meeting. There shall be a meeting of the Owners on the first Saturday in November of each year at 11:00 o'clock A.M. upon the Common Area or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Board delivered to the Owners not less than ten



(10) days prior to the date fixed for said meeting. At the annual meeting, the Board shall present a statement of the common expenses, itemizing actual receipts and disbursements for the current calendar year, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

B. **Special Meetings.** Special Meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of this Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by a majority of the Board, or by the Owners having one-third (1/3) of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

17. **Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States Mail, postage prepaid, addressed to each such person at the address given by such person to the Board or Manager for the purpose of service of such notice or to the unit of such person if no address has been given to the Manager. Such address may be changed from time to time by notice in writing to the Board or the Manager.

18. **Authority of the Board of Directors.** The Board, for the benefit of the condominium and the Owners, shall enforce the provisions hereof and shall cause what shall pay for out of the common expense fund hereinafter provided for, the following:

A. The services of a person or firm to manage its affairs (herein called "the Manager") to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board or are furnished by the Manager.

Any management agreement for the Project will be terminable by the Owners Association for cause upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. In the event the management contract is terminated for any reason, the Association shall not assume self-management of the Project but shall arrange further professional management. The effectuation of any decision by the Association to terminate professional management and assume self-management of the Project shall require the written approval of each institutional holder of a first mortgage lien on units in the Project.

B. Water, sewer, garbage collection, snow removal, electrical, telephone and gas and other necessary utility service for the Common Area (and to the extent not separately metered or charged to the units).

C. A policy or policies of fire insurance as the same are more fully set forth in Paragraph 28 of this Declaration, with extended coverage endorsement, for the full insurable replacement value of the units and Common Area, payable as provided in Paragraphs 29 and 30, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners, and their mortgagees, as their respective interests may appear, which said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees of each condominium unit, if any.

D. A policy or policies as the same are more fully set forth in Paragraph 29 of this Declaration insuring the Board, the Owners and the Manager against any liability to the public or to the Owners (of units and of the Common Area, and their invitees, or tenants), incident to the ownership and/or use of the Project, and including the personal liability exposure of the Owners. Limits of liability under such insurance shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit covering bodily injury, personal injury and property damage (such limits and coverage to be reviewed at least annually by the Board and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

E. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

F. Legal and accounting services necessary or proper in the operation of the Common Area or the enforcement of this Declaration.

G. A fidelity bond naming the Manager, and such other persons as may be designated by the Board as principals and the Owners as obligees, for the first year in an amount at least equal to one hundred fifty percent (150%) of the estimated cash requirement for that year as determined under Paragraph 21 hereof, and for each year thereafter in an amount at least equal to one hundred fifty percent (150%) of the total sum collected through the common expense fund during the preceding year.

II. Painting, maintenance, repair and all landscaping of the Common Area, and such furnishings and equipment for the Common Area as the Board shall determine are necessary and proper, and the Board shall have the exclusive right to acquire the same for the Common Area; provided, however, that the interior surfaces of each unit shall be painted, maintained and repaired by the Owners thereof, all such maintenance to be at the sole cost and expense of the particular Owner.

I. Painting, maintenance, repair of the exterior of the Project and of each Unit as the Board shall determine are necessary and proper to protect or to preserve the appearance and value of the Project.

J. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is required to secure or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of this Declaration, provided that if any such materials, supplies, labor, services, maintenance, repairs, structural alteration, insurance, taxes or assessments are provided for particular units, the cost thereof shall be specially assessed to the Owners of such units.

K. Maintenance and repair of the interior or exterior of any unit, or of any Limited Common Area appurtenant to any unit, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Area or preserve the appearance and value of the Project, and the Owner or Owners of said unit have failed or refused to perform the maintenance or repair for which they are responsible pursuant to Paragraph 10 hereof, within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners, provided that the Board shall levy a special assessment and in addition shall levy a surcharge equal to 20% of said costs as an administrative cost, against the condominium unit of such Owner or Owners for the cost of said maintenance or repair.

The Board's powers hereinabove enumerated shall be limited in that the Board shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of replacing portions of the Common Area, subject to all the provisions of this Declaration) having a cost in excess of ONE THOUSAND DOLLARS (\$1,000.00) except as expressly provided herein.

19. **Board Powers, Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the common expense fund or from mortgagees' escrow.

20. **Alterations, Additions and Improvements of Common Area.** There shall be no structural alterations, capital additions to, or capital improvements of the Common Area requiring an expenditure in excess of ONE THOUSAND DOLLARS (\$1,000.00) without the prior approval of Owners holding a majority of the total votes.

21. **Common Expenses; Assessments.**

A. Within thirty (30) days prior to the beginning of each calendar year the Board, advised by the Audit and Budget Committee, shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners equally in the initial amounts as set forth in the schedule attached hereto and marked Exhibit "C." Declarant will be liable for the amount of any assessment against completed units owned by Declarant and held for sale. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners equally, unless otherwise provided herein. Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal

monthly installments on or before the first day of each month during such year, or in such other reasonable manner as the Board shall designate.

B. Within thirty (30) days after adoption of any proposed budget for the condominium, the Executive 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 fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the Unit Owners or any larger vote specified in this Declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.

C. The rights, duties and functions of the Board set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the first election of the Board hereunder.

D. All funds collected hereunder shall be expended for the purposes designated herein.

E. The omission by the Board before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his unit.

22. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each Class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

23. Default in Payment of Assessments. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses or assessments and special assessments as described in Paragraphs 21 and 22 shall be maintainable without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to the Owner of any condominium unit plus interest at twelve percent (12%) per annum, and costs, including reasonable attorney's fees, shall become a lien upon such condominium unit as provided in §47-7C-16 of the Condominium Act. The said lien for non-payment of common expenses, assessments and special assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

A. Tax and special assessment liens on the unit in favor of any assessment district and special district; and

B. Encumbrances on the Owner's condominium unit recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Each institutional holder of a first mortgage lien on any unit in the Project shall be entitled to prompt notice if the Owner has not cured a default in payment pursuant to this section within thirty (30) days after receiving notice of such default.

A certificate executed and acknowledged by a majority of the Board stating the indebtedness secured by the lien upon any condominium unit created hereunder, shall be conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or any encumbrancer or prospective encumbrancer of a condominium unit upon request at a reasonable fee, not to exceed TEN

DOLLARS (\$10.00). Unless the request for a certificate of indebtedness shall be complied with within ten days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien held by the person making the request. Any encumbrancer holding a lien on a condominium unit may pay any unpaid common expenses payable with respect to such condominium unit and upon such payment such encumbrance shall have a lien on such condominium unit for the amounts paid of the same rank as the lien of his encumbrance.

Upon payment of a delinquent assessment concerning which such a certificate has been so recorded, or other satisfaction thereof, the Board shall cause to be recorded in the same manner as the certificate of indebtedness a further certificate stating the satisfaction and the release of the lien thereof. Such lien for non-payment of assessment may be enforced by sale by the Board or by a bank or trust company or title insurance company authorized by the Board, such sale to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Owner shall be required to pay the costs and expenses of such proceedings and reasonable attorney's fees.

In case of foreclosure, the Owner shall be required to pay a reasonable rental for the condominium unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board or Manager shall have the power to bid on the condominium unit at foreclosure or other sale and to hold, lease, mortgage and convey the condominium unit.

#### 24. Mortgage Protection.

##### A. Notwithstanding all other provisions hereof:

(1) The liens created hereunder upon any condominium unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value. Each holder of a first mortgage lien on a unit who comes into possession of the unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the unit free of any claims for unpaid assessments and charges against the unit which accrue prior to the time such holder comes into possession of the unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Project units including the mortgaged unit. After the foreclosure of any such mortgage there may be a lien created pursuant to Paragraph 22 hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(2) No amendment to this Section shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof; nor shall any material amendment to this Declaration or to the Bylaws of the Owners Association be made without the prior written approval of each institutional holder of a first mortgage lien on units in the Project;

(3) By subordination agreement executed by a majority of the Board, the benefits of (1) and (2) above may be extended to mortgages not otherwise entitled thereto.

##### B. Any institutional holder of a first mortgage on a unit is entitled to:

(1) Inspect the books and records of the Association during normal business hours;

(2) Receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and

(3) Written notice of all meetings of the Association, and may designate a representative to attend all such meetings.

C. In the event of substantial damage to or destruction of any unit or any part of the common elements, the institutional holder of any first mortgage on a unit is entitled to timely written notice of any such damage or destruction and no provision of this Declaration or of any document establishing the Association entitles the Owner of a unit or

other party to priority over such institutional holder with respect to the distribution to such unit of any insurance proceeds.

D. If any unit or portion thereof or the common area or facilities, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration, or of any document establishing the Association, entitles the Owner of a unit or other party to priority over such institutional holder with respect to the distribution to such unit of the proceeds of any award or settlement.

25. **Delegation to Manager.** The Board may delegate any of its duties, power or functions, including, but not limited to, the authority to give the certificate provided for in Paragraph 23 hereof, and the authority to give the subordination agreements provided for in Paragraph 24 hereof, to any person or firm, to act as Manager of the Project, provided that any such delegation shall be revocable upon notice by the Board. The members of the Board shall not be liable for any omission or improper exercise by the Manager of such duty, power or function so delegated by written instrument executed by a majority of the Board. In the absence of any appointment, the Chairman of the Board shall act as Manager.

26. **Failure of the Board to Insist on Strict Performance; No Waiver.** The failure of the Board or Manager to insist in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, 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 condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or Manager.

27. **Limitation of the Board's Liability.** The Board shall not be liable for any failure of water supply or other service to be obtained and paid for by the Board hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Board. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making or repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

28. **Indemnification of Board Members.** Each member of the Board shall be indemnified by the Owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board, or any settlement thereof, whether or not he is a member of the Board at the time such expenses are incurred, except in such cases wherein the member of the Board is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Board.

29. **Insurance.** The Board shall obtain and maintain at all times insurance of the type and kind and in at least the amounts provided hereinabove and in §47-7C-13, N.M.S.A. (1978), and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use which insurance shall be governed by the following provisions:

A. All policies shall be written with a company licensed to do business in the State of New Mexico and holding a rating of "AAA" or better by Best's Insurance Reports;

B. Exclusive authority to adjust losses under policies hereafter in force in the Project shall be vested in the Board or its authorized representatives;

C. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees;

D. Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board, in behalf of all of the Owners, may realize under any insurance policy which the Board may have in force on the Project at any particular time;

E. Each Owner shall be required to notify the Board of all improvements made by the Owner of his condominium unit, the value of which is in excess of ONE THOUSAND DOLLARS (\$1,000.00);

F. Any Owner who obtains individual insurance policies covering any portion of the Project other than personal property belonging to such Owner, shall be required to file a copy of such individual policy or policies with the Board within thirty (30) days after purchase of such insurance;

G. The Board Committee shall be required to make every effort to secure insurance policies that will provide for the following:

(1) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents, and guests;

(2) That the master policy on the Project cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Owners;

(3) That the master policy on the Project cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board or Manager without a prior demand in writing that the Board or Manager cure the defect; and

(4) That any "no other insurance" clause in the master policy exclude individual Owners' policies from consideration;

H. The annual insurance review which the Board is required to conduct as provided in Paragraph 18 above shall include an appraisal of the improvements in the Project by a representative of the insurance carrier writing the master policy.

30. Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. Reconstruction of the buildings, as used in this paragraph means restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster, with each unit and the Common Area having the same vertical and horizontal boundaries as before. Such reconstruction shall be accomplished by the Manager or Board.

If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Manager or Board, using proceeds of insurance, if any, on the buildings for that purpose, and the Unit Owners shall be liable for assessment for any deficiency. If two-thirds (2/3) or more of the buildings are destroyed or substantially damaged, the Unit Owners shall be obligated to reconstruct said buildings. However, the Owners may, by a vote of at least three-fourths (3/4) of the voting power, elect not to reconstruct said buildings. In this event, the Manager or Board shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

A. The property shall be deemed to be owned in common by the Owners;

B. The undivided interest in the property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Area;

C. Any liens affecting any of the condominium units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the property; and

D. The property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the Owners equally, after first paying out of the respective shares of the Owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each Owner.

Notwithstanding all other provisions hereof, the Owners may, by an affirmative vote of at least three-fourths (3/4) of the voting power, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

31. **Taxation of Units.** So long as permitted by the Condominium Act and by the appropriate taxing authorities, each unit and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing authority for any type of tax authorized by law, including ad valorem taxes and special assessment.

32. **Enforcement.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and with the administrative rules and regulations drafted pursuant thereto as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration, Articles of Incorporation, Bylaws of the Association, and administrative rules and regulations, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board or Manager on behalf of the Owners, or in a proper case, by an aggrieved Owner.

33. **Personal Property.** The Board or Manager may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and in the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Owners equally, and shall not be transferable except with a transfer of a condominium unit. A transfer of a condominium unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

Within thirty (30) days following the completion of construction of the Project, the Declarant shall execute and deliver a bill of sale to the Board in behalf of all the Owners, transferring all items of personal property located on the Project and furnished by the Declarant, if any, which property is intended for the common use and enjoyment of the Owners.

34. **Audit.** Any Owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Manager or Board. The Board at the expense of the Association, shall cause to be prepared by a Certified Public Accountant, a statement of operation including a balance sheet and a statement of application of funds based upon all books and records pertaining to the Project at no greater than annual intervals and furnish copies thereof to the Owners. Only if deemed necessary by the Board shall an audit be made at the expense of the Association.

35. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

36. **Amendment.** Except as otherwise provided herein and in §47-7B-10, N.M.S.A. (1978), the provisions of this Declaration may be amended by an instrument in writing evidencing the vote or agreement of record Owners holding at least sixty-seven percent (67%) of the total vote hereunder, which amendment shall be effective upon recordation in the Office of the County Clerk of Bernalillo County, New Mexico.

37. **Agent.** The name and address of the agent for service of process is THOMAS N. BURLISON, 1909 Carlisle Blvd. N.E., Albuquerque, New Mexico 87110.

38. **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof or any provision of the Bylaws of the Association.

39. **Conflicting Provisions.** In the case of conflict between the Articles and the Bylaws, the Articles shall control. In the case of conflict between this Declaration and the Bylaws, this Declaration shall control, except to the extent this Declaration is inconsistent with the Condominium Act.

40. **Effective Date.** This Declaration shall take effect upon recordation.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 29<sup>th</sup>  
day of May, 1985.

PRESLEY COMPANY OF NEW MEXICO

By Charles E. Cook  
Charles E. Cook, President

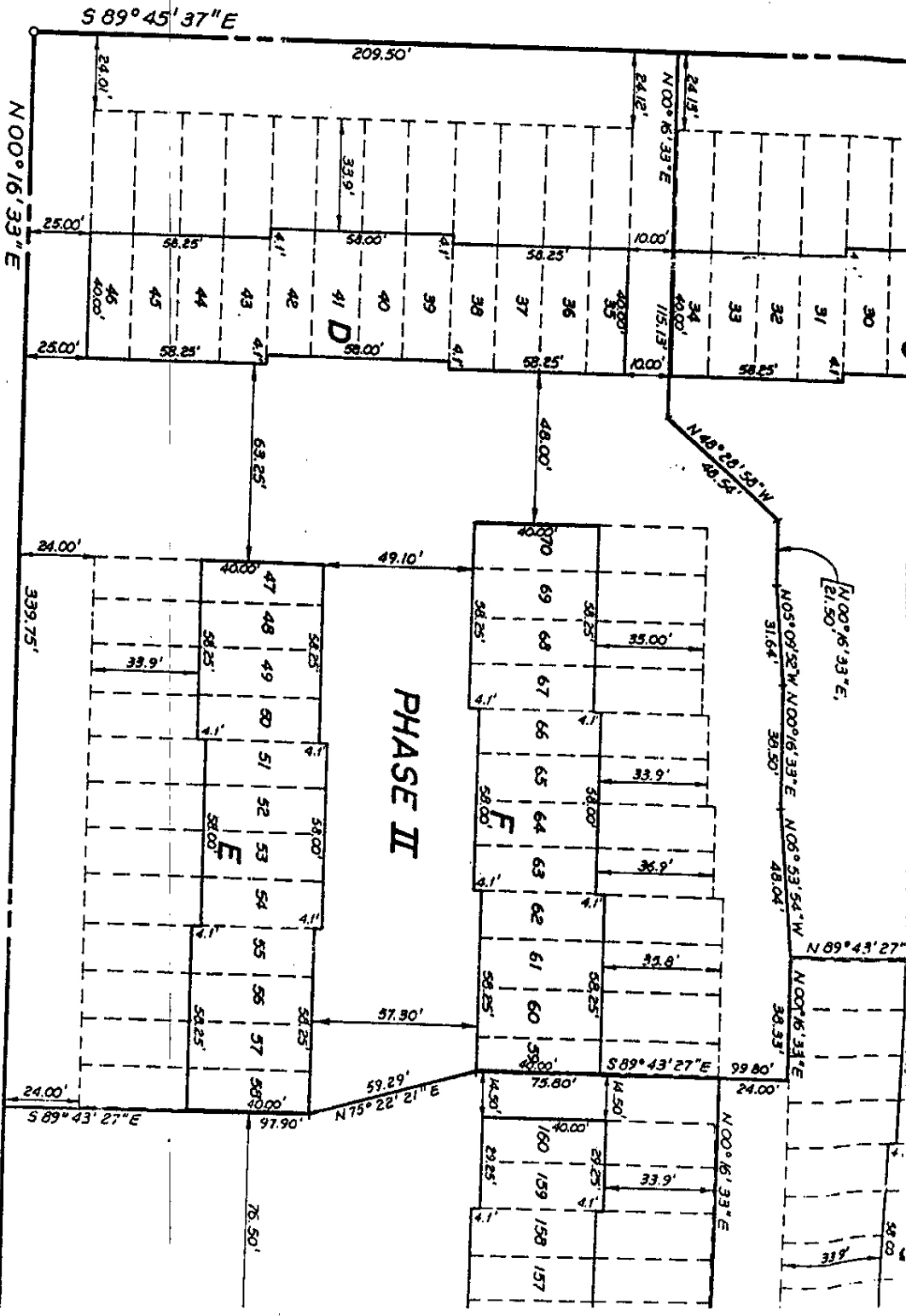
STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of  
May, 1985, CHARLES E. COOK, President of PRESLEY COMPANY OF NEW  
MEXICO, a New Mexico corporation, on behalf of said corporation.

My commission  
expires 4-4-88.

John V. Intke  
Notary Public





CERTIFICATION

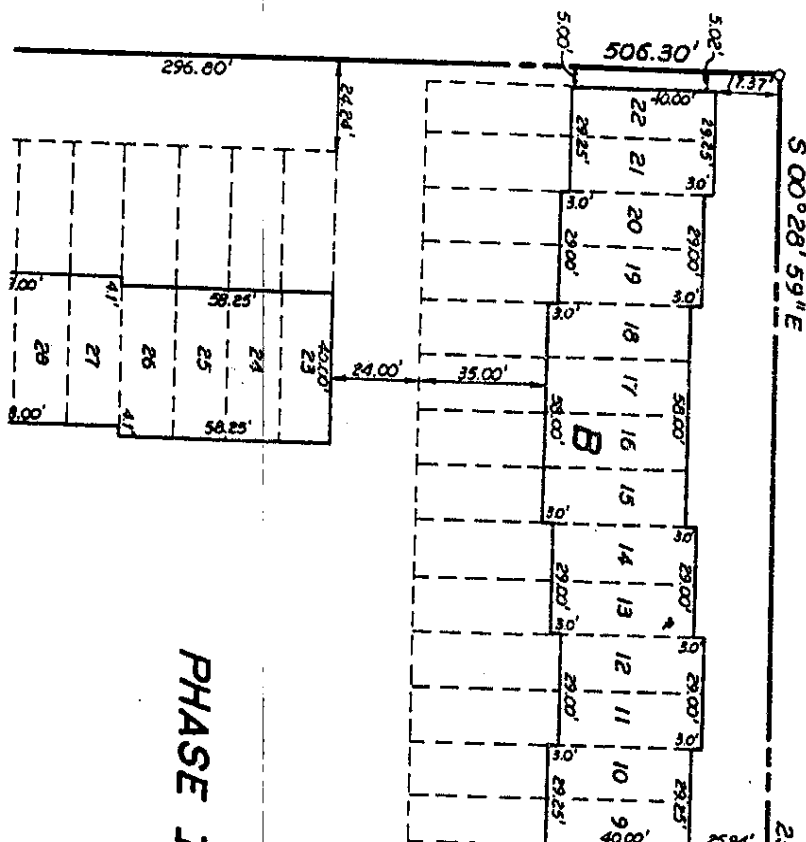
I hereby certify that these plans contain all the information required by the Condominium Act (87-7B-9 N.M.S.A. 1978).

MONROE ST.

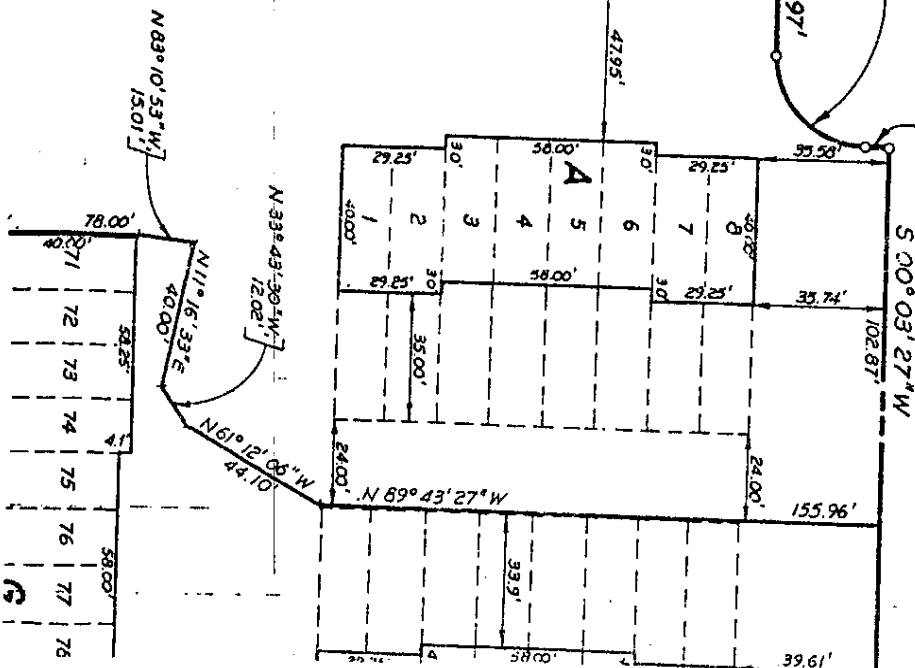
NE.

R = 25.00'  
Δ = 89°16'39"  
L = 38.95'

AZTEC RD. NE.



PHASE I



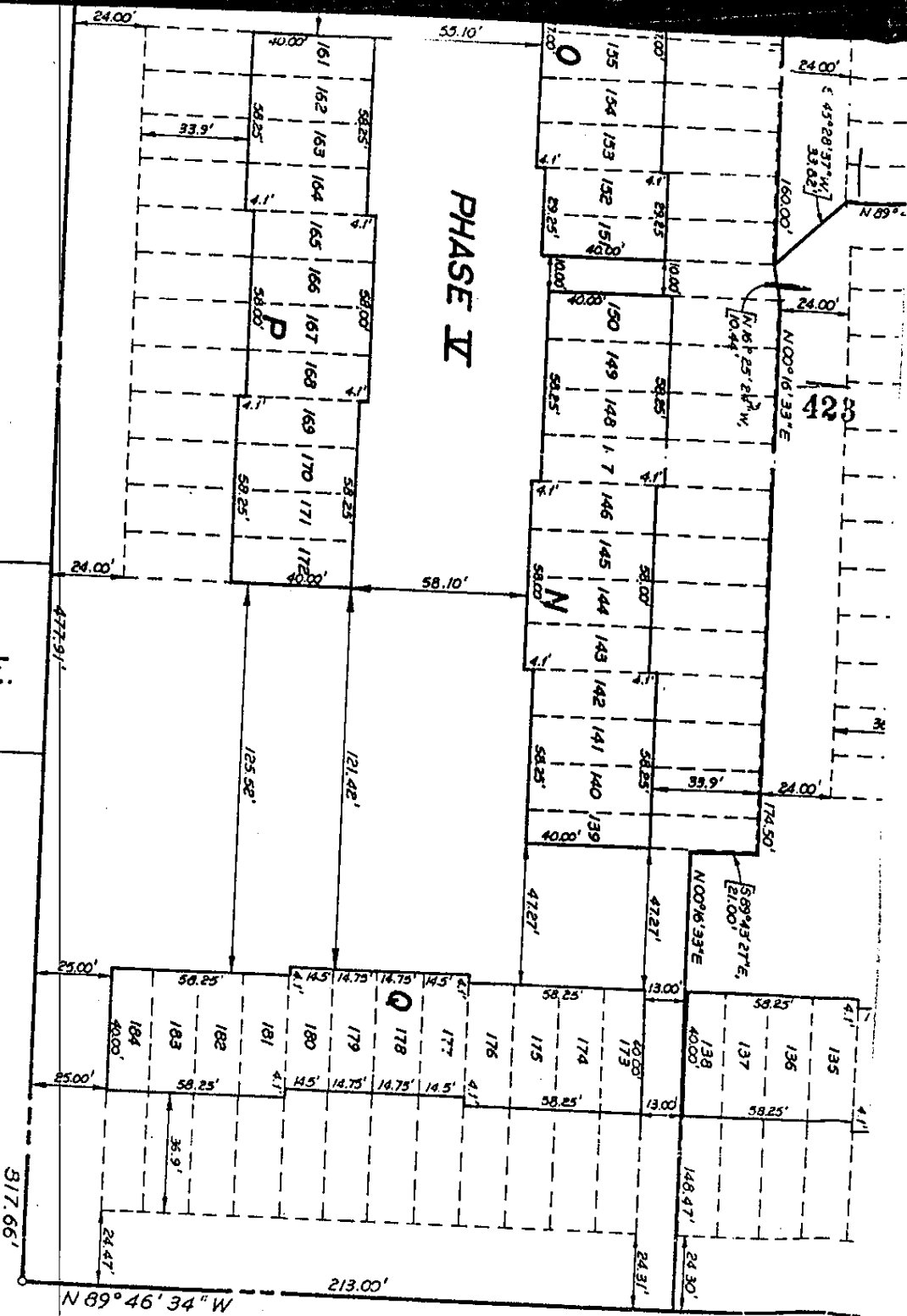
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the

AZTEC  
RD. NE.

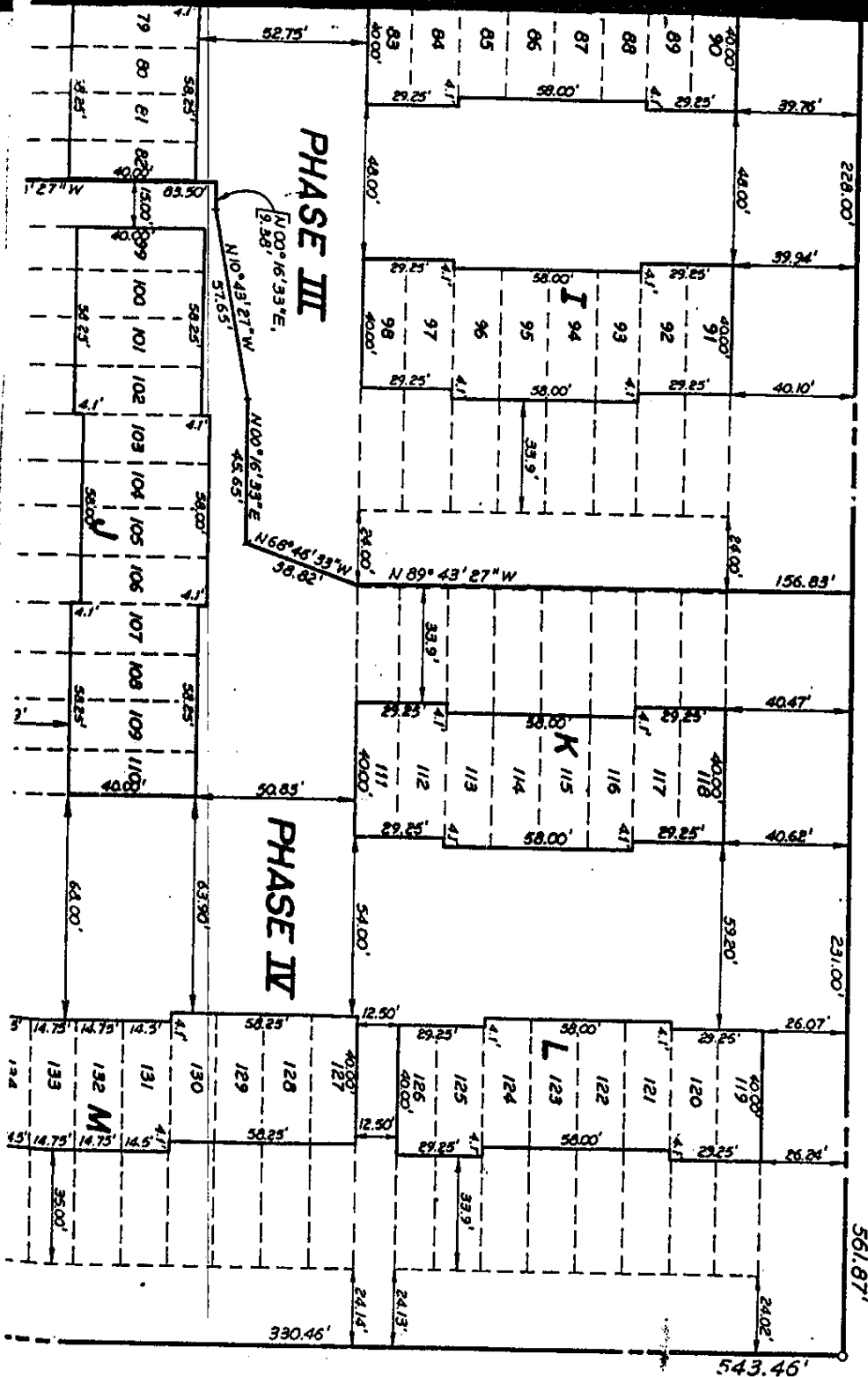
Job No. 5032-09  
Office T.A.  
Drill R.D.  
E.A.  
Mining

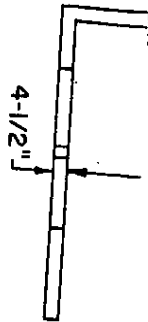
**eh**  
ESPEY, HUSTON & ASSOC., INC.  
Engineering & Environmental Consulting  
4801 NOLAN SPRING ROAD NE SUITE 204  
ALBUQUERQUE, NEW MEXICO 87110  
PHONE (505) 259-1625



424

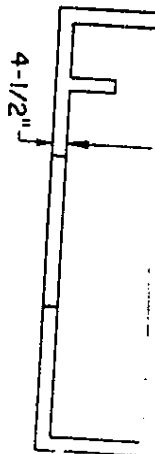
TRACT B OF WELLINGTON EAST





TYPICAL GROUND FL. OR

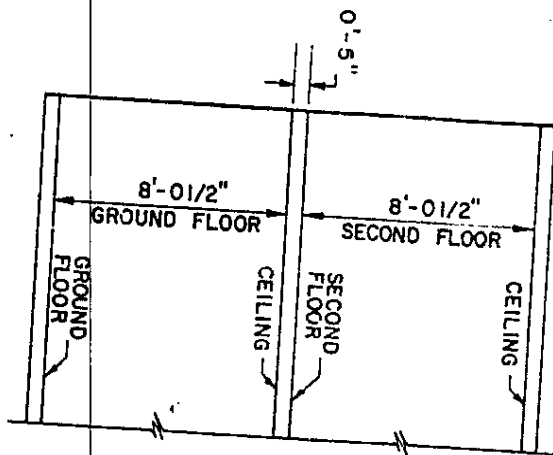
493.50 Sq. ft.



TYPICAL SECOND FLOOR

549.50 Sq. ft.

CONTAINS 1,043 SQ. FT. +



8'-0 1/2"  
UND FLC

8'-0 1/2"  
SECOND FLOOR

**GROUND FLOOR**

SECOND FLOOR

**CEILING -**

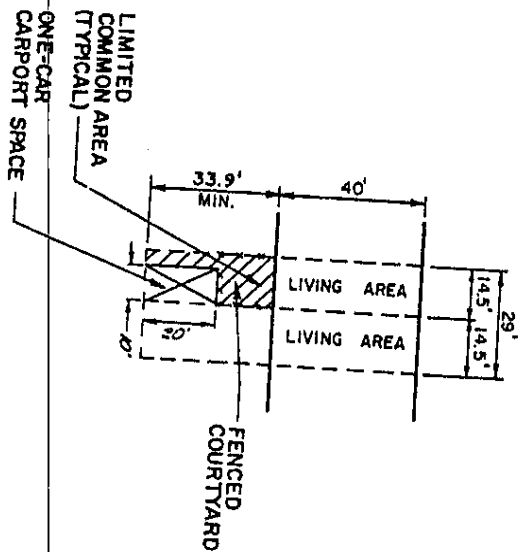
SECOND FLOOR

## CEILING

GROUND -  
FLOOR

**SECTION**

**NOTE: ALL DIMENSIONS SHOWN TO STRUCTURAL WALL EXCLUSIVE OF VENEER**



LIMITED  
COMMON AREA  
(TYPICAL) \_\_\_\_\_

FENCED  
COURTYARD

LIVING AREA  
-----  
LIVING AREA

**LIVING AREA**

**33.9'**  
**MIN.**

---

29'

14.5	14.1
------	------

2

7

PHASE I

A tract of land situate within and designated on the plat of office of the County Clerk of 1984 (C25-149), and being more

BEGINNING at the northwest  
northwest corner of the quarter

THENCE S 89° 45' 37" E, 209.5

THENCE S 00° 16' 33" W, 115.1

THENCE S 48° 20' 58" E, 49.54

THEACE 505° 08' 53"E

THENCE S 30° 16' 33" W, 38.5'

THENCE S 06° 53' 54" E, 48.06,

THE NCE 50° 16' 33" W, 38.3

HENCE  $118^{\circ} 43' 27''$  W.  $99.50'$

THEENCE S 75° 22' 21" W, 59.20'

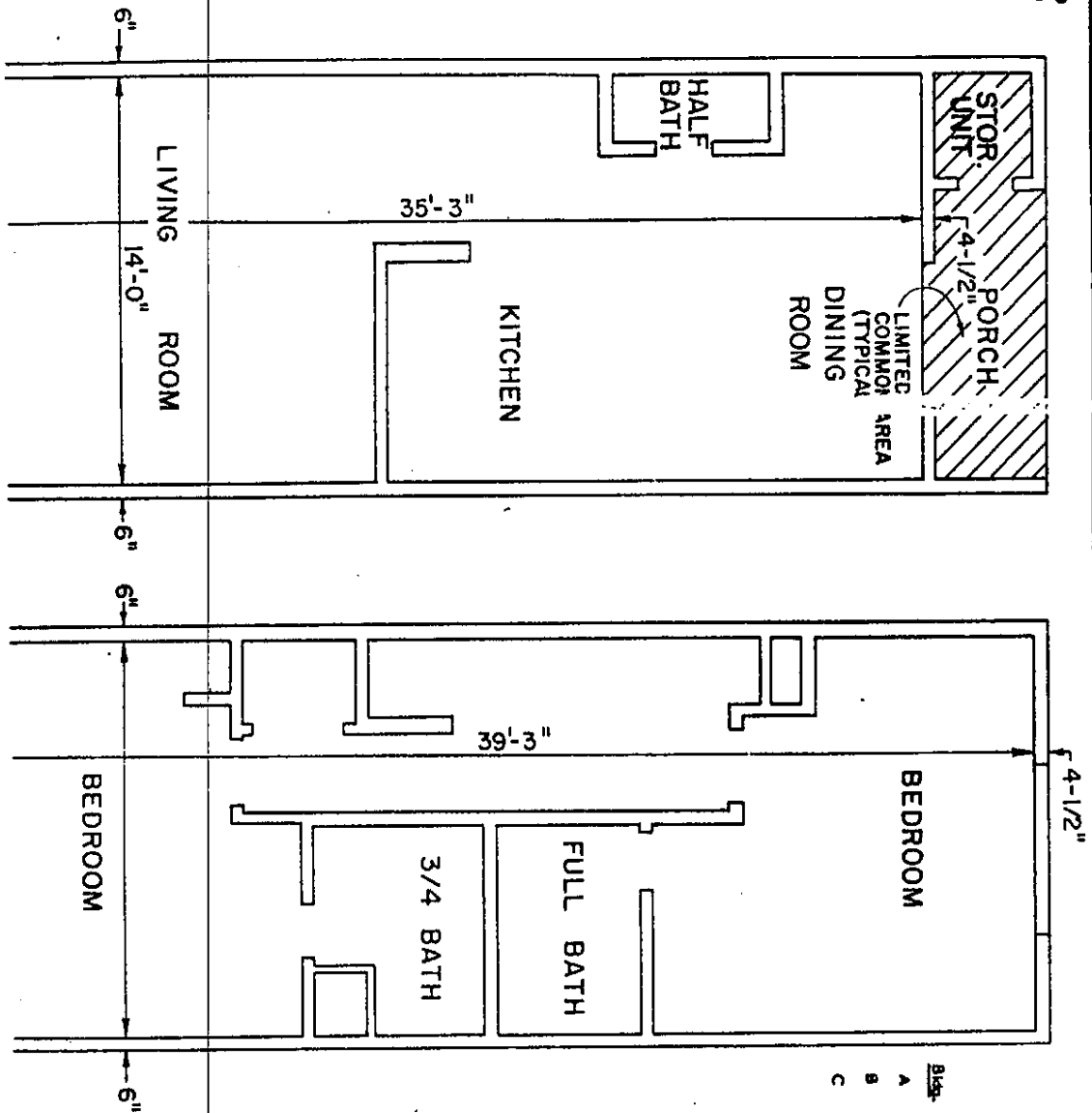
16.5 m. E., 739

1

1

I hereby certify that these plans  
Condominium Act (47-7B-9 N.M.S.A.

CEH



PHASE I				PHASE II			
Blg.	Unit No.	Elev.	Blg.	Unit No.	Elev.	Blg.	Blg.
A	1 thru 8	518.33	D	35 thru 46	518.00	G	
B	9 thru 22	518.43	E	47 thru 58	517.83	H	
C	23 thru 34	518.13	F	59 thru 70	517.83	I	

### PHASE I

A tract of land situate within and designated on the plat of office of the County Clerk of 1984 (C25-149), and being more BECHTOLD, at the northeast corner of the district northeast corner of the district.

THENCE S. 00° 28' 59" E, 230.5 feet through a central angle of

THENCE S. 80° 45' 37" E, 6.95

THENCE S. 00° 03' 27" W, 102.6

THENCE N. 89° 43' 27" W, 155.7

THENCE N. 61° 12' 06" W, 44.17

THENCE N. 33° 43' 30" W, 12.0

THENCE N. 11° 16' 33" E, 40.06

THENCE N. 83° 10' 53" W, 15.6

THENCE N. 80° 43' 27" W, 78.6

THENCE N. 44° 52' 54" W, 46.0

THENCE N. 00° 16' 33" E, 38.5

THENCE N. 05° 09' 52" W, 31.6

THENCE N. 00° 16' 37" E, 21.59

THENCE N. 48° 28' 58" W, 46.5

THENCE N. 00° 16' 33" E, 115.1

FINISHED  
ELEVATION

427

Continuation of the southeast corner of Phase IV, said point being common to the southeast corner of the aforementioned Tract B;

THENCE N 89° 46' 34" W, 330.46 feet to a point;

THENCE N 00° 16' 33" E, 148.47 feet to a point;

THENCE S 89° 43' 27" E, 21.00 feet to a point;

THENCE N 00° 16' 33" E, 174.50 feet to a point;

THENCE N 16° 23' 24" W, 10.44 feet to a point;

THENCE N 45° 28' 37" E, 23.82 feet to a point;

THENCE S 89° 43' 27" E, 63.50 feet to a point;

THENCE S 00° 16' 33" W, 9.38 feet to a point;

THENCE S 10° 43' 27" E, 57.65 feet to a point;

THENCE S 00° 16' 33" W, 45.65 feet to a point;

THENCE S 68° 46' 33" E, 36.82 feet to a point;

THENCE S 89° 43' 27" E, 154.83 feet to a point;

THENCE S 00° 03' 27" W, 231.00 feet to the point of beginning.

PHASE IV

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST filed in the office of the County Clerk of Kernillo County, New Mexico, on November 27, 1964 (C25-149), and being more particularly described as follows:

BE GAINING at the southwest corner of Phase V, said point being common to the southwest corner of the aforementioned Tract B<sub>2</sub>.

THENCE S 89° 43' 27" E, 97.50 feet to a point;  
 THENCE N 75° 22' 21" E, 59.29 feet to a point;  
 THENCE S 89° 43' 27" E, 75.80 feet to a point;  
 THENCE S 00° 16' 33" W, 160.00 feet to a point;  
 THENCE S 16° 25' 24" E, 10.44 feet to a point;  
 THENCE S 00° 16' 33" W, 174.50 feet to a point;  
 THENCE N 89° 43' 27" W, 21.00 feet to a point;  
 THENCE S 00° 16' 33" W, 148.47 feet to a point;  
 THENCE N 89° 46' 34" W, 213.00 feet to the point of beginning.

tain all the information required by the

22/2/01

Job No. 5032-09

EXHIBIT "A"

# LAFAYETTE PLACE CONDOMINIUMS

## COMPRISING

### TRACT B OF WELLINGTON EAST

PHASE III			PHASE IV			PHASE V		
Unit No.	Elev.	Block	Unit No.	Elev.	Block	Unit No.	Elev.	Block
THU 82	5183.33	J	THU 110	5182.33	N	THU 150	5177.33	
THU 90	5184.33	K	THU 118	5183.33	O	THU 160	5179.33	
THU 98	5183.33	L	THU 126	5183.50	P	THU 172	5177.33	
		M	THU 132	5182.00	Q	THU 178	5178.33	
		M	THU 138	5180.50	Q	THU 184	5177.33	

TRACT B, WELLINGTON EAST, as the same is shown in Tracts A and B, WELLINGTON EAST filed in the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-1493), and being more particularly described as follows:

corner of Phase I, said point being common to the mentioned Tract B;

feet to a point of curvature;

and along a curve to the left, whose radius is 25.00 feet to a point of tangency;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

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feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

feet to a point;

BEGINNING at the southeast corner of Phase III, whence the southeast corner of the aforementioned Tract B, bears S 00° 03' 27" W, 231.00 feet;

THENCE N 89° 43' 27" W, 156.83 feet to a point;

THENCE N 68° 46' 33" W, 38.82 feet to a point;

THENCE N 00° 16' 33" E, 45.65 feet to a point;

THENCE N 10° 43' 27" W, 57.65 feet to a point;

THENCE N 00° 16' 33" E, 9.38 feet to a point;

THENCE N 89° 43' 27" W, 83.50 feet to a point;

THENCE S 45° 28' 37" W, 33.82 feet to a point;

THENCE N 00° 16' 33" E, 160.00 feet to a point;

THENCE S 89° 43' 27" E, 24.00 feet to a point;

THENCE N 00° 16' 33" E, 38.33 feet to a point;

THENCE S 89° 43' 27" E, 78.00 feet;

THENCE S 89° 10' 53" E, 15.01 feet to a point;

THENCE S 11° 16' 33" W, 40.00 feet to a point;

THENCE S 33° 43' 30" E, 12.02 feet to a point;

THENCE S 61° 17' 06" E, 44.10 feet to a point;

THENCE S 89° 43' 27" E, 155.96 feet to a point;

THENCE S 00° 03' 27" W, 228.00 feet to the point of beginning.

## PHASE IV

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-1493), and being more particularly described as follows:

BEGINNING at the southeast corner of Phase IV, said point being common to the southeast corner of the aforementioned Tract B;



**BYLAWS  
OF  
LAFAYETTE PLACE CONDOMINIUM OWNERS ASSOCIATION**

LAFAYETTE PLACE CONDOMINIUM OWNERS ASSOCIATION, a New Mexico corporation, does hereby adopt the following Bylaws which shall govern the administration of LAFAYETTE PLACE CONDOMINIUM.

**ARTICLE I**

**DEFINITIONS**

A. "Declarant" shall mean PRESLEY COMPANY OF NEW MEXICO, a New Mexico corporation, which has made and executed the Declaration, its successors in interest or its assigns.

B. "Declaration" shall mean the instrument by which LAFAYETTE PLACE CONDOMINIUM is established as provided for under the New Mexico Condominium Act.

C. "Project" shall mean the entire parcel of real property referred to in the Declaration to be divided into condominium units and the Common areas, including all structures thereon.

D. "Location and Floor Plan" shall mean the site plan and floor plans of LAFAYETTE PLACE CONDOMINIUM prepared by Espey-Huston & Associates, Inc. filed in the office of the County Clerk of Bernalillo County, New Mexico contemporaneously herewith, with any amendments thereto.

E. "Phase I" shall mean that real property located in Bernalillo County, New Mexico, described in the Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

F. "Phase II" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-1" to the Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

G. "Phase III" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-2" to the Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

H. "Phase IV" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-3" to the Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

I. "Phase V" shall mean that real property located in Bernalillo County, New Mexico, described in Exhibit "D-4" to the Declaration, together with all improvements constructed or to be constructed thereon and all easements, servitudes, rights and appurtenances belonging thereunto and all chattels intended for use in connection therewith.

J. "Unit" or "condominium unit" shall mean the elements of the condominium which are not owned in common with the owners of other condominium units in the Project as shown on the plat. The boundary lines of each unit are as described in S47-7B-2, N.M.S.A. (1978), in Paragraph 3 of the Declaration, and are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and including both the portions of the building so described and the space so encompassed.

K. "Common Area" shall mean all land and all portions of the property not located within any unit also includes, but not without limitation to, conduits, wires and other utility installations to the outlets, common walls, to the interior surfaces thereof, regardless of location, stairways, walkways, gardens, walkway balconies, offices, all installations of power, light, gas and water existing for common use and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

L. "Limited Common Areas" means common areas shown or designated as porch, storage unit, covered carport or Limited Common Area on the location plan, which areas are allocated to and reserved for the use of certain units to which they are appurtenant to the exclusion of the use by others. The use of the limited common areas shall be further controlled by the provisions of the Declaration and rules and regulations promulgated by the Association of Unit Owners.

M. "Condominium" shall mean the real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

N. "Unit Owner" or "Owner" shall mean the person or persons with an ownership interest in a condominium unit in the Project.

O. "Association" or "Association of Unit Owners" means all of the Unit Owners acting as a group in accordance with the Bylaws and Declaration.

P. "Board" or "Executive Board" shall mean the Board of Directors of the Lafayette Place Condominium Owners Association or an Executive Board elected therefrom acting on behalf of the Association.

Q. "Common Expenses" includes all sums lawfully assessed against the Unit Owners by the Association of Unit Owners; expenses of administration, maintenance, repair or replacement of the Project and of common areas and facilities; and expenses declared to be common expenses and items of expense referenced as such in the Declaration.

R. "Person" means an individual, corporation, partnership, combination, association, trustee, or other legal entity.

## ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATIONA. Association of Unit Owners and Reservation of Special Declarant Rights.

(1) Each Owner of any unit shall automatically be a member of the Lafayette Place Condominium Owners Association, and if owning more than one unit shall hold one membership for each unit so held by said Owner in the Association, which shall be the governing and administrative body for all Unit Owners for the protection, preservation, upkeep, maintenance, repair and replacement of the exterior of the Units and buildings, the Common Areas and Facilities and the government, operation and administration of the Project property as a whole and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership shall automatically cease. Upon any transfer of ownership of any unit, regardless of how accomplished, the new Unit Owner acquiring or succeeding to such ownership interest shall likewise automatically succeed to such membership in such Association. No person other than an Owner may be a member of the Association.

(2) During the first five (5) years of the existence of the Condominium Project immediately following the filing of the Declaration, the Declarant or persons designated by Declarant may appoint and remove the officers and members of the Executive Board of the Association. Notwithstanding the foregoing period provided for Declarant control, such control shall terminate no later than the earlier of:

(a) 180 days after conveyance of ninety percent (90%) of the units to Unit Owners other than the Declarant;

(b) two years after Declarant has ceased to offer units for sale in the ordinary course of business; or

(c) five years after any development right to add new units was last exercised.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of that period, but in that event Declarant may require, for the duration of the period of Declarant control, that any actions of the Association or the Executive Board deemed by Declarant to have a significant effect on Declarant, as described in an instrument to be executed by Declarant and duly recorded with the County Clerk, be approved by Declarant before such actions become effective.

The election of members of the Executive Board or the appointment thereof shall be controlled by §47-7C-3, E, F and G, N.M.S.A. (1978).

B. Voting and Bylaws. At any meeting of the Owners, each Owner, including Declarant, shall be entitled to cast his or her vote for each unit owned in accordance with the percentages specified in Exhibit "C" attached to the Declaration. Any Owner may attend and vote at any meeting duly called in person, or by an agent duly appointed by an instrument in writing signed by the Owner and filed with the Board or the Manager. Any designation of an agent to act for an Owner may be revoked at any time by written notice to the Board or the Manager, and shall be deemed revoked when the Board or the Manager shall

receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance by such Owner of his condominium unit. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such person must be signed by all such persons. Declarant shall be entitled to vote with respect to any condominium unit owned by Declarant and as provided in the Bylaws of the Association.

In the event that a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a condominium unit against the Owner of the condominium unit covered by the mortgage, then and until the default is cured, the right of the Owner of such condominium unit to vote shall be transferred to the mortgagee recording the notice of default. The administration of the property is governed by these Bylaws, a true copy of which is annexed to the Declaration, marked Exhibit "B," and incorporated therein by reference hereto. No modification of or amendment to these Bylaws shall be valid unless set forth in an amendment to the Declaration and the amendment duly recorded.

### ARTICLE III

#### PROPERTY RIGHTS IN THE COMMON PROPERTIES

A. Members' Easements of Enjoyment. Subject to the provisions of Paragraph B of this Article, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every condominium unit.

B. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common properties, and in aid thereof, to mortgage said properties. In the event of a default upon any such mortgage, the lenders' rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members, and, if necessary, to open the enjoyment to a wider public until the mortgage debt is satisfied; whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of every member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge any reasonable admission or other fees for the use of the common properties; and

(e) The right of individual members to the exclusive use of parking spaces as provided in Paragraph C of this Article; and

B. Special Assessments for Capital Improvements. In addition to the annual assessments and pursuant to Paragraph 22 of the Declaration, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

## ARTICLE V

### MEETINGS

A. Meetings. The presence at any meeting of Owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the provisions of this Article, and at that meeting the presence of Owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may give notice to all the Owners in accordance with this Article of an adjourned meeting, and, at that meeting, whatever Owners are present shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

(1) Annual Meeting. There shall be a meeting of the Owners on the first Saturday in November of each year at 11:00 o'clock A.M. upon the Common Area or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Board delivered to the Owners not less than ten (10) days prior to the date fixed for said meeting. At the annual meeting, the Board shall present a statement of the common expenses, itemizing actual receipts and disbursements for the current calendar year, and the estimated common expenses for the coming calendar year. Within ten (10) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting.

(2) Special Meetings. Special Meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration require the approval of all or some of the Owners, or for any other reasonable purpose. Said meetings shall be called by written notice, signed by a majority of the Board, or by the Owners having one-third (1/3) of the total votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place of the meeting, and the matters to be considered thereat.

## ARTICLE VI

### BOARD OF DIRECTORS

A. Number and Tenure. The property and affairs of the Association shall be managed by the Board of Directors. The first Board of Directors will consist of the three (3)

(f) The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by the members entitled to cast two-thirds (2/3) of the votes has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least thirty (30) days in advance of any action taken.

C. Parking Rights. The Association shall maintain upon the common properties at least one parking space for each living unit. Subject to reasonable rules and conditions, the Association may designate at least one parking space conveniently located with respect to each living unit for the exclusive use of the members residing therein, their families and guests. The use of such space by any other member or person may be enjoined by the Association or by the members entitled thereto. The right to the exclusive use of such parking space and to their maintenance and designation by the Association shall be appurtenant to and shall pass with the title to each living unit if such designation is made by the Association or if the member has purchased such right from Developer or another member.

D. Delegation of Use. Any member may delegate his right of use and enjoyment of the common properties and facilities to members of his family, his tenants or his contract purchasers who reside on the property. Any person to whom said rights of use and enjoyment are delegated shall be subject to the same conditions, restrictions and limitations applicable to the delegating member.

#### ARTICLE IV

##### MAINTENANCE ASSESSMENTS

A. Common Expenses, Annual Assessments. Pursuant to Paragraph 21 of the Declaration, each member shall be liable for the payment of annual assessments or charges. The Board will set the annual assessment amount for each calendar year called the "assessment year". Until the assessment year beginning January 1, 19\_\_\_\_, the annual assessment for living units may not exceed that shown on Exhibit "C" to the Declaration per living unit. From and after January 1, 19\_\_\_\_, the amount of the annual assessment may be changed as provided in said Paragraph 21 of the Declaration.

The annual assessment will be due and payable in twelve equal monthly installments during the assessment year on the day of the month (which need not be uniform as to all living units) set by the Board. Initially the assessment shall be prorated to December 31 of the year of purchase from such date as the sale of each unit is closed.

The Association may change the maximum and basis of the assessments fixed by Paragraph 21 of the Declaration prospectively for any period therein specified, provided that any such change shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Directors named in the Articles and will serve until the First Annual Meeting of Members, at which time a new Board consisting of three (3) Directors will be elected by the members or appointed subject to the provisions of Paragraph 14 of the Declaration. Thereafter, the Board will consist of three (3) Directors unless changed by the Association.

B. Qualifications, Removal, Vacancies. Directors need not be a member of the Association. Directors will hold office until their successors are elected and qualified. A Director may be removed with or without cause upon a majority vote of the Directors for persistent failure to attend regular meetings of the Board. In the event of death, resignation, or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

C. Compensation. Directors shall not be paid for services rendered as a Director, but shall be entitled to receive reimbursement for actual expenses incurred in the performance of their duties.

D. Meetings of the Board. The Annual Meeting of the Board will be held immediately following the Annual Meeting of the Members. Regular Meetings of the Board shall be fixed from time to time by Board Resolution. Special Meetings of the Board may be called by the President or any two (2) Directors by giving written notice to each Director at least three (3) days prior to such Special Meeting. Such notice of Special Meeting shall specify the time, place and purpose of the meeting.

E. Action by the Board. The Directors may only act as a Board. The Board may act by majority vote of the Directors present at a duly called meeting at which a quorum is present. A majority of the Directors then in office present in person constitutes a quorum. The Board may also act without a meeting, but only by unanimous consent in writing executed by all Directors then in office.

F. Nomination of Directors. Nominations for election to the Board shall be made by the Nominating Committee at least twenty (20) days prior to the Annual Meeting of Members. Such nominations shall be delivered to the Secretary. The Nominating Committee may make as many nominations as it desires, but shall nominate not less than the number of directorships to be filled. Such nominations may be made from among members and/or non-members of the Association.

G. Election of Directors. The Secretary will prepare a ballot describing the vacancies to be filled, setting forth the nominees selected by the Nominating Committee, and providing a space for a write-in vote for each vacancy. The ballot will be included with the notice of the annual meeting to be mailed to each member. Each member of proxy holder will be entitled to one vote for each directorship to be filled. The completed ballot must be returned by mail or delivered to the Secretary before the commencement of the Annual Meeting of Members. The ballot must be signed and dated by the member or proxy holder. The Secretary will count the ballots and announce the results at the Annual Meeting of Members. The names receiving the largest number of votes will be elected as directors. Any controversy as to the validity of any ballot or the right of any member or proxy holder to vote will be determined by the Board of Directors.

H. Powers and Duties of the Board.

(a) The Board shall have power:

- (1) To call special meetings of the members at its discretion;
  - (2) To enter into such contracts with third parties as it deems necessary and desirable for the discharge of its duties;
  - (3) To appoint and remove, at its discretion, all officers, agents and employees of the Association, to fix their compensation, and to require of them such security or fidelity bond as may be deemed expedient;
  - (4) To establish, levy, assess and collect annual and special assessments pursuant to Paragraphs 20 and 21 of the Declaration;
  - (5) To adopt and publish rules and regulations governing the use of the Common Properties and the personal conduct of the members and their guests thereon;
  - (6) To engage or employ attorneys, accountants and such other professional assistance as may be deemed necessary;
  - (7) To bring such suits in the name of the Association at law or in equity, as may be deemed necessary to enforce the covenants, conditions and restrictions set forth in the Declaration; and
  - (8) To exercise all powers in the name of the Association set forth in the Declaration, Articles or these Bylaws, and the authority contained in Section 18 of the Declaration.
- (b) The Board shall have the duty:
- (1) To maintain a complete record of its actions and corporate affairs and to report thereon at the Annual Meeting of Members;
  - (2) To supervise all officers, agents and employees of the Association;
  - (3) As more particularly set forth in the Declaration:
    - (i) To fix the amount of the annual assessment against each Living Unit prior to January 1 of each year;
    - (ii) To prepare a roster of annual assessments applicable to each Living Unit to be maintained in the office of the Association and to be kept open for examination by any member;
    - (iii) To send written notice of the annual assessment to each member; and
    - (iv) To issue, or cause to be issued, upon demand by any member or interested person a certificate setting forth whether any annual or special assessment has been paid;
  - (4) To maintain, repair, rebuild and keep in good condition all the Common Properties and the exterior of the Project and of each Unit as the Board



shall determine are necessary and proper to protect or to preserve the appearance and value of the Project;

- (5) To pay all valid taxes, liens or other charges against the Common Properties, if any;
- (6) To maintain fire and hazard insurance, if applicable, and liability insurance on the Common Properties in accordance with the Declaration provisions; and
- (7) To perform all other obligations of the Association set forth in the Declaration, Articles and these Bylaws.

I. Committees. The Board may appoint the following standing committees, each of which shall consist of a chairman who shall be a Director and two (2) members who shall not be Directors and each of which shall serve from the close of the Annual Meeting of Members to the close of the next Annual Meeting of Members.

(a) The Nominating Committee, which shall have the duties set forth in Paragraph E of this Article VI.

(b) The Maintenance Committee, which shall advise on all matters pertaining to maintenance, repair and improvements to the Common Properties.

(c) The Audit and Budget Committee, which shall prepare the annual budget for the next ensuing year, approve or disapprove the balance sheet and operating statement for the previous year, and supervise the annual audit of the Association's books. The Treasurer shall serve as an ex-officio member of this committee.

## ARTICLE VII

### OFFICERS

A. Enumeration of Offices. The officers of this Association shall be a President, and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

B. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

C. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

D. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

E. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of

receipt of such notice or at any later time specified therein, and unless otherwise specified therein the acceptance of such resignation shall not be necessary to make it effective.

F. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

G. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Paragraph D of this Article.

H. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors and perform such duties as required by the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of the Board and of the members; shall keep the seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer. Subject to the delegation of authority to a Manager by the Board, the Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE VIII

### GENERAL PROVISIONS

A. Seal. The Board may, but need not, adopt a form of seal to be used by the Association.

B. Waiver of Notice. Any notice of meeting required by the Declaration or these Bylaws will be considered given when mailed to the last address shown by the records of the Association or when delivered. Any such notice requirement will be considered waived by any person who waives notice in writing, either before or after the meeting, or by any person who appears at the meeting for any reason other than to contest the validity of the call of the meeting.

C. Indemnity. The Association will defend, indemnify and hold harmless each member, director, officer or committee member of the Association against expenses and liabilities reasonably incurred in connection with any claim or lawsuit in which such member, director, officer or committee member is made a party by reason of the performance of his duties in such capacity, provided, however, that this provision does not apply to gross negligence or willful misconduct by the indemnitee.

D. Amendments. These Bylaws may be amended at any regular or special meeting of the Board by majority vote of the Directors present at such meeting; provided, however, that any provisions of these Bylaws which are controlled by the Articles or the Declaration may not be amended except as provided in the Articles or Declaration. No amendment shall be effective unless prepared and filed in accordance with the Condominium Act and the Nonprofit Corporation Act and no material amendment to these Bylaws shall be made without the prior written approval of each institutional holder of a first mortgage lien on units in the Project.

E. Construction. In the case of conflict between the Articles and these Bylaws, the Articles shall control. In the case of conflict between the Declaration and these Bylaws, the Declaration shall control, except to the extent the Declaration is inconsistent with the Condominium Act.

F. Severability. The invalidity of any provision of these Bylaws shall not affect the validity of the remaining provisions of these Bylaws or of the Declaration.

#### CERTIFICATE

IN WITNESS WHEREOF, we, the undersigned, constituting all the Directors of LAFAYETTE PLACE CONDOMINIUM OWNERS ASSOCIATION, a New Mexico nonprofit corporation, hereby certify that the foregoing Bylaws were duly adopted as the Bylaws of LAFAYETTE PLACE CONDOMINIUM OWNERS ASSOCIATION on the \_\_\_\_\_ day of \_\_\_\_\_, 1985, at the first meeting of the Board of Directors of said Association.

#### DIRECTORS:

\_\_\_\_\_  
C. W. Reynolds, President

\_\_\_\_\_  
William C. Thompson, Vice President

\_\_\_\_\_  
Charles E. Cook, Secretary

# LAFAYETTE PLACE CONDOMINIUM

## PHASE I

440

<u>Building/Unit</u>	<u>Approximate Square Footage</u>	<u>Per Unit Percentage of Individual Interest (Determination of Pro Rata Share of Common Area Expenses and Insurance Participation and Voting)</u>	<u>Original Assessment (Monthly)</u>	<u>Vote</u>
<u>Building A</u>				
Units A-1 thru A-8	1,043 each unit	2.9411765 each unit	\$47.00	1 vote per unit
<u>Building B</u>				
Units B-9 thru B-22	1,043 each unit	2.9411765 each unit	\$47.00	1 vote per unit
<u>Building C</u>				
Units C-23 thru C-34	1,043 each unit	2.9411765 each unit	\$47.00	1 vote per unit
		100.00%	\$1,598.00	34 votes

EXHIBIT "C"

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-149), and being more particularly described as follows:

BEGINNING at the northwest corner of Phase II, said point being common to the northwest corner of the aforementioned Tract B;  
THENCE S 89° 45' 37" E, 209.50 feet to a point;  
THENCE S 00° 16' 33" W, 115.13 feet to a point;  
THENCE S 48° 28' 58" E, 48.54 feet to a point;  
THENCE S 00° 16' 33" W, 21.50 feet to a point;  
THENCE S 05° 09' 52" E, 31.64 feet to a point;  
THENCE S 00° 16' 33" W, 38.50 feet to a point;  
THENCE S 06° 53' 54" E, 48.04 feet to a point;  
THENCE S 00° 16' 33" W, 38.33 feet to a point;  
THENCE N 89° 43' 27" W, 99.80 feet to a point;  
THENCE S 75° 22' 21" W, 59.29 feet to a point;  
THENCE N 89° 43' 27" W, 87.90 feet to a point;  
THENCE N 00° 16' 33" E, 339.75 feet to the point of beginning;

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-149), and being more particularly described as follows: BEGINNING at the southeast corner of Phase III, whence the southeast corner of the aforementioned Tract B, bears S 00° 03' 27" W, 231.00 feet;  
THENCE N 89° 43' 27" W, 156.83 feet to a point;  
THENCE N 68° 46' 33" W, 38.82 feet to a point;  
THENCE N 00° 16' 33" E, 45.65 feet to a point;  
THENCE N 10° 43' 27" W, 57.65 feet to a point;  
THENCE N 00° 16' 33" E, 9.38 feet to a point;  
THENCE N 89° 43' 27" W, 83.50 feet to a point;  
THENCE S 45° 28' 37" W, 33.82 feet to a point;  
THENCE N 00° 16' 33" E, 160.00 feet to a point;  
THENCE S 89° 43' 27" E, 24.00 feet to a point;  
THENCE N 00° 16' 33" E, 38.33 feet to a point;  
THENCE S 89° 43' 27" E, 78.00 feet;  
THENCE S 83° 10' 53" E, 15.01 feet to a point;  
THENCE S 11° 16' 33" W, 40.00 feet to a point;  
THENCE S 33° 43' 30" E, 12.02 feet to a point;  
THENCE S 61° 12' 06" E, 44.10 feet to a point;  
THENCE S 89° 43' 27" E, 155.96 feet to a point;  
THENCE S 00° 03' 27" W, 228.00 feet to the point of beginning.

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-149), and being more particularly described as follows: BEGINNING at the southeast corner of Phase IV, said point being common to the southeast corner of the aforementioned Tract B;  
THENCE N 89° 46' 34" W, 330.46 feet to a point;  
THENCE N 00° 16' 33" E, 148.47 feet to a point;  
THENCE S 89° 43' 27" E, 21.00 feet to a point;  
THENCE N 00° 16' 33" E, 174.50 feet to a point;  
THENCE N 16° 25' 24" W, 10.44 feet to a point;  
THENCE N 45° 28' 37" E, 33.82 feet to a point;  
THENCE S 89° 43' 27" E, 83.50 feet to a point;  
THENCE S 00° 16' 33" W, 9.38 feet to a point;  
THENCE S 10° 43' 27" E, 57.65 feet to a point;  
THENCE S 00° 16' 33" W, 45.65 feet to a point;  
THENCE S 68° 48' 33" E, 38.82 feet to a point;  
THENCE S 89° 43' 27" E, 156.83 feet to a point;  
THENCE S 00° 03' 27" W, 231.00 feet to the point of beginning;

A tract of land situate within TRACT B, WELLINGTON EAST, as the same is shown and designated on the plat of TRACTS A AND B, WELLINGTON EAST, filed in the office of the County Clerk of Bernalillo County, New Mexico, on November 27, 1984 (C25-149), and being more particularly described as follows:

BEGINNING at the southwest corner of Phase V, said point being common to the southwest corner of the aforementioned Tract B;  
 THENCE N 00° 16' 33" E, 477.91 feet to a point;  
 THENCE S 89° 43' 27" E, 97.90 feet to a point;  
 THENCE N 75° 22' 21" E, 59.29 feet to a point;  
 THENCE S 89° 43' 27" E, 75.80 feet to a point;  
 THENCE S 00° 16' 33" W, 160.00 feet to a point;  
 THENCE S 16° 25' 24" E, 10.44 feet to a point;  
 THENCE S 00° 16' 33" W, 174.50 feet to a point;  
 THENCE N 89° 43' 27" W, 21.00 feet to a point;  
 THENCE S 00° 16' 33" W, 148.47 feet to a point;  
 THENCE N 89° 46' 34" W, 213.00 feet to the point of beginning.

STATE OF NEW MEXICO  
 COUNTY OF BERNALILLO  
 FILED FOR RECORD

1985 MAY 31 PM 1:55

*Mex 234-A 405-444*

DOLORES C. WALLER  
 CO. CLERK & RECORDER

EXHIBIT "D-4"

*Lisa Bush* DEPUTY