

**BYLAWS
OF
SUNDANCE ESTATES HOMEOWNERS ASSOCIATION**

**ARTICLE I
Plan of Lot Ownership**

Section 1.1. **Applicability.** These Bylaws provide for governance of the Sundance Estates Homeowners Association, which has been created pursuant to the Declaration of Protective Covenants for the Sundance Estates Subdivision, filed for record on June 29, 2000, in Book 1781, Page 698-717, and any supplements thereto.

Section 1.2. **Definitions.**

(a) The term "Association" shall mean the Sundance Estates Homeowners Association.

(b) The term "Declaration" shall mean the Declaration of Protective Covenants for the Sundance Estates Subdivision filed for record on June 29, 2000, in Book 1781, Page 698 - 717, and any supplements thereto.

(c) The term "Declarant" shall have the same meaning ascribed to it in the Declarations.

(d) The term "Lot Owner" or "Owner" shall mean Owners of Lots. A Lot shall mean the subdivided lots contained within the Subdivision and any unsubdivided Tract or Tracts within the Subdivision.

(f) The term "Subdivision" means the Sundance Estates Subdivision, as shown and designated on Subdivision Plat of Survey recorded on June 29, 2000, in Plat Book 447,

Page 38 - 44, records of Santa Fe County, New Mexico.

(g) All terms not otherwise defined herein shall have the meanings ascribed to them in the Declaration are incorporated herein by reference as if fully stated in these Bylaws.

Section 1.3. **Compliance.** Pursuant to the provisions of the Declaration, every Lot Owner and all those entitled to occupy a Lot shall comply with these Bylaws.

Section 1.4. **Office.** The office of the Association, shall be located at 6301 Indian School Road NE, suite 206, Albuquerque, NM 87110, or at such other place as may be designated from time to time by the Board of Director.

ARTICLE II

Membership

2.1. **Membership.** Ownership of a Lot is required in order to qualify for membership in the Association. Every person or entity who is the beneficial owner of a fee simple interest, including the purchaser under a contract of sale, in any Lot shall be a member of the Association; provided that any person or entity holding such interest as security for the payment of a debt or performance of any obligation shall not be a member; provided, farther, that any person or entity who acquires such interest at a judicial sale or by conveyance in lieu of foreclosure shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to the Declaration. Such membership shall terminate without any formal Association action whenever such person ceases to own a Lot, but such termination shall not relieve or release any such former Lot Owner from any liability or obligation incurred under or in any way connected With this Association during' the period of such ownership and membership in this Association, or impair and rights or remedies which the Board of Directors of the Association or others may have against such former Lot Owner and member arising out of or in any way connected with Lot ownership, Association membership, and the Declaration or obligations incident thereto.

2.2. **Classes of Membership.** The Association shall have one (1) class of membership.

2.3. **Voting.**

(a) **Member Control.** Except as provided in Section 2.3(d), all action of the members shall be taken on a vote of a majority-in-interest of the members.

(b) **Right to Vote.** -Each member shall be entitled to vote- as provided in this Article on all matters properly submitted for vote to the membership of the Association. Voting shall be non-cumulative. The right to vote may not be severed' from any Lot, and any sale, transfer or conveyance or the beneficial interest of the fee of any Lot to a new Lot Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto. Notwithstanding the foregoing, no member may vote at any

meeting or be elected to or serve on the Board of Directors if the Association has perfected a lien against his Lot and the amount necessary to release such lien has not been paid at the time of such meeting or election.

When any provisions of the Declarations' Articles of Incorporation or Bylaws of the Association or of law calls for the vote or consent of the members is any stated percentage, the following rules apply:

1. Whenever a vote of the members is required, it is sufficient to obtain a written consent of the same percentage of members; and

2. The percentage shall be of the total number of votes per Lot or tract and not a percentage of members of the Association.

(c) **Multiple Ownership and Voting Rights.** If title to any Lot shall be held by two or more persons, then each such co-tenant shall be a member of this Association but shall be entitled to only one vote per Lot. Any one co-tenant owner of a Lot attending a meeting may, and shall be deemed to have, the authority to cast the vote of all other co-owners of that Lot who are absent from such meeting and have not executed a proxy with respect to their vote.

(d) Notwithstanding anything to the contrary in these Bylaws or in the Articles of Incorporation of the Association, Declarants shall have the right and authority, without regard to the number of Lots owned by Declarants, to designate, remove and replace the members of the Board of Directors of the Association, designate the members of the Architectural Control Committee, or may alone take any action required to be taken by the members of the Association until the earlier of January 2, 2010, or the first day of the first month after Declarants, or either of them, ceases to own, in the aggregate, 50 Lots, or thirty (30) days after written notice by Declarants, of any voluntary relinquishment of Declarants' rights established by this Subparagraph (d).

Section 2.4. **Annual Meetings.** The annual meetings of the Association shall be held no later than thirty-five (35) days before the beginning of the fiscal year. At such annual meeting, the Board of Directors shall be elected by ballot of the members in accordance with the requirements of Section 3.4 of Article III of these Bylaws and all budget changes shall be considered in accordance with Article V of these Bylaws.

Section 2.5. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors.

Section 2.6. **Special Meetings.** The President shall call a special meeting of the Association members if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by members holding not less than twenty percent (20%) in interest of the votes in the Association. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 2.7. **Notice of Meetings.** The Secretary, shall mail to each member a notice of each meeting of the members at least ten (10) but not more than sixty (60) days prior to such meeting, or not more than thirty (30) days, if the meeting is for ratification of the budget under Article V, Section 5.2, prior to such meeting, stating the time and place of the meeting and items of the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a director or officer. The mailing of a notice of meeting in the manner provided in this Section and Section 9.1 of Article IX of these Bylaws shall be considered service of notice.

Section 2.8. **Adjournment of Meetings.** If at any meeting of the Association members a quorum is not present, the members who are present at such meeting in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting Was called. No quorum need exist as a condition to the exercise of Declarants' rights pursuant to Section 2.3(d).

Section 2.9. **Order of Business.** The order of business of all meetings of the Association members shall be as follows:

- (a) Roll call and determination of quorum;
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of Board of Directors;
- (f) Reports of committees;
- (g) Election or appointment of inspectors of election (when so required);
- (h) Election of members of the Board of Directors (when so required);
- (i) Unfinished business;
- (j) New business.

Section 2.10. **Title to Lots. Title to a Lot** may be taken in the name of one or more persons, in any manner permitted by law, provided that such members shall have one vote hereunder as provided for above.

Section 2.11. **Proxies.** A vote may be cast in person or by proxy. Such proxy may be granted by a member in favor of only another member or Mortgagee. Proxies shall be duly executed in writing, shall be valid only for the particular meeting designated therein and must be filed with the secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owing such Lot. No proxy shall in any event be valid for a period in excess of one (1) year after the execution thereof.

proxies

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

Section 2.13. **Conduct of Meetings,** The President shall preside over all meetings of the Lot Owners' Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. The President may appoint a person to serve as parliamentarian at any meeting of the Lot Owners' Association. The then current edition of *Robert's Rules of Order* shall govern the conduct of all meetings of the Association when not in conflict with the Declaration and these Bylaws. Failure to follow *Robert's Rules of Order* shall not, without other grounds, invalidate any action taken. All votes shall be tallied by tellers appointed by the President.

ARTICLE

Board of Directors

Section 3.1. **Number of Qualification.** The affairs of the Association shall be governed by a Board of Directors elected annually by the members or designated by the Declarants pursuant to Section 2.3(d).

Section 3.2 **Powers and Duties.** The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are permitted by law, the Declaration or by these Bylaws and not required to be exercised and done by the members. The Board of Directors may delegate to one of its members or to a person employed for such purpose, the authority to act on behalf of the Board of Directors on such matters relating to the duties of the Managing Agent (as defined in Section 3.3 of these Bylaws), if any, which may arise between meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by these Bylaws or by any resolution of the Association they may hereinafter be adopted, the Board of Directors shall on behalf of the Association:

(a) Prepare an annual budget, in which there shall be established the assessment of each Lot Owner for the Common Expenses pursuant to Article V.

(b) Make assessments against Lot Owners to defray Common Expenses and the costs and expenses of the Association, as provided for in Article V, and establish the means and methods of collecting such assessments from the Lot Owners; and establish the period of the installment payment of the annual assessment for Common Expenses. Unless otherwise determined by the Board of Directors, the annual assessment against each Lot Owner for his or her proportionate share of the Common Expenses shall be payable in

equal monthly installments, each such installment to be due and payable in advance on the first day of each month for such month.

(c) Provide for the operation, care, upkeep and maintenance of the common areas of the Subdivision.

(d) Designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the roads, streets and cul de sacs in the Subdivision (collectively the "Roadways") (including snow removal) and provide services for the Roadways and where appropriate, provide for the compensation of such personnel and for the purchase of equipment and supplies to be used by such personnel in the performance of their duties.

(e) Collect the assessments against the Lot Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the purposes of the Association.

(f) Open bank accounts on behalf of the Association and designate the signatories thereon.

(g) Make, or contract for the making of, repairs, restoration, additions and improvements to or alterations of the common areas of the Subdivision, in accordance with the Declaration and these Bylaws, after damage or destruction.

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

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

(j) Pay the cost of all authorized services rendered to the Association and not billed to Lot Owners of individual Lots or otherwise provided for in Sections 5.1 and 5.2 of these Bylaws.

(k) Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Association, and the administration of the Association, specifying the Common Expenses, and any other expenses incurred. Such books and vouchers accrediting the entries thereupon shall be available for examination by the members, their duly authorized agents or attorneys, during general business hours on working days at the time and in the manner set and announced by the Board of Directors

for the general knowledge of the members. All books and records shall be kept in accordance with accepted accounting practices.

(I) Borrow money on behalf of the Association when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Subdivision, provided, however, that the consent of a majority of members, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required to borrow any such in excess of Two Thousand Dollars (\$2,000).

(m) Acquire, hold and dispose of Lots and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Association.

(n) File all required governmental reports.

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

Section 3.3. Managing Agent. The Board of Directors may employ for the Association "Managing Agent" at a compensation established by the Board of Directors.

(a) Requirements. The Managing Agent shall employ persons possessing a high level of competence in the technical skills necessary to proper management of the Association. The Managing Agent must be able to advise the Board of Directors regarding the administrative operation of the Association.

(b) Duties. The Managing Agent shall perform such duties and services as the Board of Directors shall authorize, including but not limited to the duties listed in Section 3.2 of these Bylaws. The Board of Directors may delegate to the Managing Agent all of the powers granted to the Board of Directors by these Bylaws. The Managing Agent shall perform the obligations, duties and services relating to management of the property, the rights of Mortgages and the maintenance of reserve funds in compliance with the provisions of these Bylaws.

(c) Standards. The Board of Directors shall impose appropriate standards of performance upon the Managing Agent Unless the Managing Agent is instructed otherwise by the Board of Directors.

(i) the cash method of accounting shall be employed;

(ii) cash accounts of the Association shall not be commingled with any other accounts;

(iii) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finders fees, service fees or otherwise; any discounts received shall benefit the Association;

(iv) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

Section 3.4. Election and Term of Office.

(a) The initial members of the Board of Directors shall serve as the Board of Directors until their successors are elected. At any such meeting, one member of the Board of Directors shall be elected for a term of one year, one member elected for a term of two years and one member elected for a term of three years. At each annual meeting thereafter a number of directors equal to that of whose term has expired shall be elected. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

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

(1) Any member may submit to the Secretary at least twenty (20) days before the meeting at which the election is to be held a nominating petition signed by members owning at least two (2) Lots, a statement that the person nominated is willing to serve on the Board of Directors and a biographical sketch of the nominee. The Secretary shall mail or hand-deliver the submitted items to every Lot Owner along with the notice of such meetings; or

(2) Nominations may be submitted from the floor at the meeting at which the election is held for each vacancy on the Board of Directors for which no more than one person has been nominated by petition as provided in subparagraph⁽¹⁾ above.

Section 3.5. Removal or Resignation of Members of the Board of Directors. Subject to Declarants' rights pursuant to Section 2.3(d), at any regular or special meeting of the members, duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a majority-in-interest of the members and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Lot Owners shall be given at least seven (7) days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the

meeting. A member of the Board of Directors may resign at any time and shall be deemed to have resigned upon disposition of his or her Lot

Section 3.6. **Vacancies.** Except during the period of Declarants' control referred to Section 2.3(d) above, vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by a vote of a majority of the remaining Directors at a special meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the directors present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Board of Directors for the remainder of the term of the member being replaced and until a successor shall be elected at the next annual meeting of the Association.

Section 3.7. **Organization Meeting.** The Board of Directors named in the Articles of Incorporation of the Association may appoint officers to serve until the first annual meeting of the members of the Association.

Section 3.8. **Regular Meetings:** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least once annually. Notice of regular meetings shall be held at least once annually. Notice of regular meetings of the Board of Directors shall be given to each director, by mail, telephone or telegraph, at least ten (10) days prior to the day named for such meeting.

Section 3.9. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on five (5) business days' notice to each director, given by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meetings. Special meetings of the Board of Directors shall be called by the President or

Secretary in like manner and in like notice in the written request for at least two (2) directors.

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

Section 3.11. **Quorum of Board of Directors.** At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those

present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might, have been transacted at the meeting originally called may be transacted without further notice.

Section 3.12. **Fidelity Bonds.** Fidelity bonds may be obtained (but are not required) for all officers, directors and employees of the Association, including the Managing Agent, handling or responsible for Association funds.

Section 3.13. **Compensation.** No director shall receive any compensation from the Association for acting as director; provided however, bona fide, necessary, out-of-pocket expenses incurred by any Director in attending duly called meetings of the Board of Directors may be paid by the Association, pursuant to a specific resolution of the Board.

Section 3.14. **Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors and the Secretary shall keep -a minute book of the.. Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. Rules established by the Board of Directors or the then current edition of *Robert's Rules of Order* shall govern the conduct of the meetings of the Board of Directors when not in conflict with the Declaration, these Bylaws or law. Failure to conduct any meeting in accordance with such rules shall not invalidate the action taken at such meeting.

Section 3.15. **Action without Meeting.** To the extent allowed by law, any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

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

(a) The Association shall indemnify every Director or officer, his or her heirs, executors and administrators, against all loss, cost and any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except in matters of gross negligence or misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters in which the Association is advised by counsel that the person to be indemnified has not been guilty

of gross negligence or misconduct in the performance of his duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, cost and expense incurred or suffered by the Association in connection with the foregoing indemnification provision shall be treated and handled by the Association as expenses of the Association. Officers and members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every agreement made by the officers, the Board of Directors or the Managing Agent on behalf of the Association shall, if obtainable, provide that the officers, the members of the Board of Directors or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder (except as Lot Owners).

(b) The Association shall not be liable for any failure of services that may be obtained by the Association or paid for as an Association expense, or for injury or damage to person or property caused by the Areas or by the member of any Lot or any other person, or (unless covered by the Association's insurance) resulting from electricity, water, snow or ice which may leak or flow from any portion of the Roadway or from any pipe, drain, conduit, appliance or equipment, unless caused by the negligence of the Association. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Subdivision, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

Section 3.17. Common or Interested Directors. Each member of the Board of Directors shall exercise his or her powers and duties in good faith and with a view to the interests of the Association. No contract or other transaction between the Association and any of its directors, or between the Association and any corporation, firm or association in which any of the directors of the Association are directors or officers or are pecuniarily or otherwise interested is either void or voidable because any such director is present at the meeting of the Board of Directors or any committee thereof which authorized or approves the contract or transaction, or because his vote is counted for such purpose, if any of the conditions specified in any of the following subparagraphs exists:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose, or

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

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

ARTICLE 1V

Officers

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

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

Section 4.3. **Removal of Officers.** Upon the affirmative vote of a majority of all members of the Board of Directors any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for such purpose.

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

Section 4.5. **Vice President.** The Vice President shall take the place 192186 President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board of Directors to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or by the President

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

Section 4.7. **Treasurer.** The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; and be responsible for the deposit of all monies and other valuable effects in the name of the Board

of Directors, the members; Association or the Managing Agent, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all duties incident to the office of Treasurer of the corporation.

Section 4.8. **Execution of Documents.** All Amendments to Bylaws required to be signed by the Association, and all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures, or obligations in excess of One Thousand Dollars (\$1,000), shall be executed by any two persons designated by the Board of Directors. All such instruments for expenditures or obligations of One Thousand (\$1,000) or less may be executed by any one person designated by the Board of Directors. All Amendments to the Declaration required to be executed by the Association shall be executed by the President and the Secretary.

Section 4.9. **Compensation of Officers.** No officer who is also a director shall receive any compensation from the Association for acting as such officer, provided, however, that officers may be reimbursed for necessary, bona fide out-of-pocket expenses incurred on behalf of the Association upon approval by the Board of Directors.

ARTICLE V ASSESSMENTS

5.1. Creation of Common Expense Fund. The Board of Directors shall establish a "Common Expense Fund" to enable the Association and the Board of Directors to exercise the powers and perform the rights, obligations and duties stated herein. Until the

Association makes an assessment for Common Expenses, Declarants shall pay all Common Expenses. Such fund shall be administered on a fiscal year commencing with the date set by the Board of Directors for the first assessment.

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

5.2. Annual Budget. Each year, after the first year, and at least seventy-five (75) days prior to the end of the Association's current fiscal year, the Board shall prepare and adopt a proposed estimate of the total amount it deems necessary for the Association's next fiscal year (hereinafter referred to as "Annual Budget") to pay the Common Expenses to be incurred to maintain and repair the roads, trails, drainage structures, fire protection system and other improvements within the common areas and easements" within the Subdivision ("Common Areas"). Within thirty (30) days after such adoption of the Annual Budget, the Board shall furnish each member an itemized copy thereof, together with notification of the date time and place of the Association's annual_ meeting at which meeting the members will consider ratification of the Annual Budget. The annual meeting of the Association shall be set within period set forth in the Declaration and shall be not less than fourteen (14) nor more than thirty (30) days after mailing of the Annual Budget to the members described hereinabove. the Annual Budget shall be deemed ratified unless members having seventy-five percent (75%) of the voting power of the Association reject the Annual Budget at the annual meeting, regardless of whether or not a quorum is present at the annual meeting.> The Annual Budget shall be based upon the aggregate sum as the managing agent or Board shall from time to time determine is to be paid by all of the members, including Declarants, to provide for the payment of all estimated Common Expenses, which sum may include, among other things, expenses of management premiums for all insurance in the amounts and types required hereunder; legal and accounting fees; management fees; expenses and liabilities incurred by the managing agency or Board under or by reason of these Bylaws; monies for any deficit remaining from

a previous period; the creation of a reasonable contingency or other reserve or surplus fund; as well as other costs and expenses relating to the Association's affairs and duties. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Lot Owner's obligation to pay his allocable share of the Common Expenses herein provided whenever the same shall be determined. In the absence of any annual budget or adjusted budget, each Lot Owner shall continue to pay periodic installments at the rate theretofore established until a new annual or adjusted budget shall have been delivered and ratified by the members.

5.3. Assessments.

(a) **Manner of Mailing.** Effective the first day of each fiscal year after the first assessment made by the Association, each Lot Owner, including Declarant if it is then a Lot Owner, shall be assessed a sum equal to his percentage of Lot ownership of the total Lots multiplied by the total Annual Budget, which sum shall be paid by the Lot Owner in a yearly installment on the first day of each fiscal year, continuing until a **new** assessment is made by the Board. The managing agent or Board of Directors shall prepare and, deliver, or mail to each Lot Owner an itemized yearly statement showing the various estimated or actual expenses for which the assessment are made, and any variances from the itemized Annual Budget ratified by the members.

(b) **Partial Year Allocation.** Contributions for yearly assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of the year. The omission or failure of the managing agent or the Board of Directors to fix the assessment for any year shall not be deemed a waiver, modification or a release of the Lot Owner from their obligations to pay the assessment for the year.

(c) **Adjustments.** If the amount of the Annual Budget proves inadequate for any reason including without limitation, non-payment of any Lot Owner's assessment, the Board of Directors may at any time levy a further assessment b1 increasing the Annual Budget and each Lot Owner shall be assessed a sum equal to his percentage of ownership of Lots multiplied by such increase; provided, however, extraordinary expenses omitted from the Annual Budget, which may become due during the fiscal year, shall first be paid from the replacement and contingency reserve; and provided

(d) further, if inadequate funds exist during the fiscal year, the Association may borrow sufficient funds from Declarants or otherwise, but Declarants shall not be obligated to loan any funds to the Association. The Board shall give written notice of any such increase, and reasons therefor, to each Lot Owner, and shall state the date and terms of payments of such increase.

(e) **Expenditure.** All such assessments collected shall be paid and expended for the purposes authorized herein, and (except for such special assessments as may be levied against less than all the Lot Owners and such adjustments as may be required to reflect

delinquent or unpaid assessments) shall be deemed 'to be held for the benefit, use and account of all Lot Owners in the same percentages as their percentage ownerships of the total Lots (as adjusted for unsubdivided Tracts). Notwithstanding any other provision contained herein, no Lot Owner shall have the right to demand that more than his pro rata share of the assessments collected be used to benefit his or her Lot.

5.5. Special Expenses. In the event any of the improvements within the Common Easements are damaged in any way through the intentional or negligent act or omission of any Lot Owner or his repair, employees, or invitees, the expense incurred by the Association for repair of such damage shall be deemed a Special Expenses. Such Special Expenses shall be levied by the Board of Directors and assessed only to 'the Lot Owner whose act or omission resulted in the aforementioned damage, and shall be paid be the Lot Owner, together with his next assessment due the Association, _or at 'the option of the Board, assessed to the Lot Owner as a Special Expense due upon receipt.

The Board of Directors, upon receiving evidence of a Lot Owner's pinon trees being insect infested, shall give notice to such Lot Owner to spray his. In the event the Lot Owner has not done so within five (5) days after the date of such written notice, the Board may order the' spraying or removal of the infested trees, with the cost thereof being assessed to such Lot Owner as a Special Expense.

5.6. Annual Accounting. Together with the notice of the annual meeting of members, the Board of Directors shall furnish to all members, for the preceding fiscal year, an itemized accounting of all the Common Expenses actually incurred, paid or accrued together with a statement of the total assessments collected, showing the net operating loss or gain. Any such gain in excess of the amount required for incurred or accrued expenses and replacement and contingency reserves, shall be apportioned according to each Lot Owner's percentage or ownership in the total Lots as a credit against the next yearly assessment, until exhausted, any such loss shall be apportioned according to each Lot Owner's percentage of ownership in the total Lots, and added to the next' yearly assessment.

5.7. Books of Account. The Board of Directors shall maintain current, detailed books of account in accordance with generally accepted accounting principles and procedures, which reflect all receipts, disbursements, assets and liabilities of the Association. Such books, records, purchase orders and payment vouchers shall be available for inspection by any member, or duly authorized representative of any member, at reasonable times during normal weekday business hours. Any Lot Owner's Mortgagee(s) shall be deemed an authorized representative of member. Upon ten (10) business days notice to the Board and payment of a reasonable fee established by the Board, any member or his Mortgagee(s) may demand and be furnished a statement of his

account reflecting the amount of any unpaid assessments or other charges due and owing from such Lot Owner.

5.8. Personal Debt-of-Lot Owner. The amount of the Common and/or Special Expenses assessed against each Lot shall be the personal and individual debt of the Lot Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common and/or Special Expenses shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid Common and/or Special Expenses from a person in possession of a Lot pursuant to a real estate installment sale contract for a period of forty-five (45) days following notice to such Person of unpaid Common and/or Special Expenses, before seeking such sums from the legal Lot Owner of such Lot.

5.9. Disclosure of Unpaid Assessments. Upon payment of a reasonable fee established by the Board of Directors, and upon the Board's receipt of written request from any Lot Owner or any Mortgagee or prospective Mortgagee of a Lot, the Association, by its managing agent or Board of Directors, shall issue an acknowledged, recordable written statement, setting forth the amount of the unpaid Common and/or Special Expenses, if any, with respect to the subject Lot,, the amount of the current yearly assessment, and date that such assessment becomes due, and the amount of credits for advance payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely **thereon in** good faith. Unless such request for a statement of indebtedness shall be complied within ten (1n) business days of its actual receipt by the Association, all unpaid Common and/or Special Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement, The Lot Owner of any Lot, by acceptance of a deed thereto, waives any objection to the disclosure of the aforementioned information by the Association and releases the Association, the Board, and its agents from any liability therefor.

5.10. No Waiver of Common and/or Special Expenses. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Easements or his Lot, by abandonment of his Lot or by any other means whatsoever.

ARTICLE VI

Insurance

6.1. Association Insurance.

(a) **Insurance of Structures.** The Association, acting through its Board of Directors or its duly authorized agent, shall obtain blanket "all-risk" coverage or all insurable structures or improvements owned by the Association. If such insurance is not generally available at a reasonable cost, then the Association shall obtain fire and extended coverage, including coverage for vandalism and malicious mischief on all insurable structures or improvements.

(b) **Liability Insurance.** The Association also shall obtain a public liability policy on the Common Area, insuring the Association and its members for damage or injury caused by the negligence of the Association or any of its members, employees, agents or contractors While acting on its behalf. If generally available at a reasonable cost, the public liability policy shall have at least a \$500,000.00 combined single limit as respect to bodily injury and property damage and at least a \$1,000,000.00 limit per occurrence and in the aggregate.

(c) **Premiums.** Premiums for all insurance on the Common Easements shall be Common Expenses and shall be included in the annual assessment

(d) **Deductibles.** The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the insurance at least equal the required coverage. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Lot Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Lot Owner of occupant

(e) **General Requirements.** All insurance coverage obtained by the Association shall:

(i) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Easements shall be for the benefit of the Association and its members.

(ii) Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(iii) Not be brought into contribution with insurance purchased by individual. Lot Owners, occupants, or their Mortgagees.

(iv) Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in real estate industry and familiar with construction in the Santa Fe County, New Mexico area.

(v) The Board shall use reasonable efforts to secure insurance policies containing endorsements that

(A) Waive subrogation as to any claims against the Association's Board, officers, employees and its manager, the Lot Owners and their tenants, servants, agents, and guests.

(B) Waive the insurer's right to repair and reconstruct instead of paying cash.

(C) Preclude cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Lot Owners, or on account of any curable defect or violation without prior written demand to the Association and allowance of a reasonable time to cure.

(D) Exclude individual Lot's Owner policies from consideration under any "other insurance" clause.

(E) Require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(f) **Fidelity Bond.** The Association also shall obtain, as a Common Expense, fidelity bond or bonds; if generally available at a reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its business judgement but, if reasonably available, shall secure coverage equal to not less than one-sixth (1/6) of the annual assessments on all Lots plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation substantial modification or non-renewal.

- (a) Immediately after damage or destruction to all or any part of the Subdivision covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair and reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.
- (b) Any damage to or destruction of improvements therein shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members of the Association decide within sixty (60) days after the loss not to repair or reconstruct
- (c) If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed
- (d) If determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition.

6.3. Disbursements of Proceeds.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary or appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagees of any affected Lot.

ARTICLE VII
Compliance and Default

Section 7.1. **Relief.** Each member shall be governed by, and shall comply with, all of the terms of the Declaration as any of the same may be amended from time to time. A default by a Lot Owner shall entitle the Association, acting through its Board of Directors

or through the Managing Agent, to specific enforcement or injunctive relief or other remedies provided by law.

(a) **Additional Liability.** Each Lot Owner shall be liable for the expense of all maintenance, repair or replacement to the Subdivision's or the Association's property rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Lot or its appurtenances.

(b) **Costs and Attorney's Fees.** In any proceeding arising out of any alleged default by a Lot Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

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

(d) **Interest.** In the event of a default by a Lot Owner in paying any sum due the Association with respect to his Lot, which default continues for a period in excess of thirty (30) days, the principal amount unpaid shall bear interest at the rate of eighteen percent (18%) per annum from the due date until paid, in addition to any fines or penalties levied pursuant to these Bylaws.

(e) **Abating and Enjoining Violations by Lot Owners.** The violation of any of the Regulations adopted by the Board of Directors, the breach of any Bylaw contained herein or the breach of any provision of the Declaration shall give the Association the right, in addition to any other rights set forth in these Bylaws: (1) to enter the Lot in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Lot Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Association shall not thereby be deemed guilty in any manner of trespass; or (2) to enjoin, abate or remedy by

appropriate legal proceedings, either at law or in equity the continuance of any such breach.

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

Section 7.2. **Lien for Assessments.**

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

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

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

(d) **Money Judgment.** A suit to recover a money judgment for unpaid contributions may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 7.3. **Supplemental Enforcement of the Lien.** In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declaration or these Bylaws, all of the Lot Owners may be required by the Declarants or the Board of Directors to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established hereby.

Section 7.4. **Subordination and Mortgagee Protection.** Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any Lot (and any penalties, interest or assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such Mortgage secures a loan made by an institutional lender, and provided, further, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser of the Lot at such sale from liability for any assessment thereafter becoming due nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

ARTICLE VIII

Amendments to Bylaws

Except as provided in Section 2.3(d), these Bylaws may not be modified or amended unless by a vote of agreement of Lot Owners to which more than sixty six percent (66%) of the votes in the Association are allocated, present at the meeting in person or by proxy, pursuant to the Act, the Declaration and these Bylaws.

ARTICLE IX

Miscellaneous

Section 9.1. **Notices.** All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, postage prepaid, (a) if to a member or Lot Owner, at the address which the member or Lot Owner shall designate in writing and file with the Secretary or, if no such

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

Section 9.2. **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 9.3. **Gender.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and ~~vice versa~~, whenever the context so requires.

IN WITNESS WHEREOF, these Bylaws have been adopted by the unanimous written act and consent of the Board of Directors of the Association, this **27** day of June, 2000.

Sundance Estates Homeowners
Association

By: Lee A. Welsh
Name: Lee A. Welsh
Title: President

By: Carolyn J. Pickard
Name: Carolyn J. Pickard
Title: Secretary