

**DECLARATION  
 OF  
 THE SHOPS AT MABE, A CONDOMINIUM  
 AND CREATION  
 OF THE  
 ASSOCIATION OF THE SHOPS AT MABE, A CONDOMINIUM**

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MaBe Resources, LLC, a New Mexico limited liability company, having an office at 5901 Del Rio Court, Farmington, New Mexico 87402 ("Declarant"), does hereby declare as follows:

**ARTICLE I  
NAME OF CONDOMINIUM**

*1.01. Name.* Declarant hereby establishes a condominium to be known as "The Shops at MaBe, a Condominium" (the "Condominium"), pursuant to the provisions of Chapter 47, Articles 7A through 7D of New Mexico Statutes Annotated (1978 compilation) (the "Condominium Act").

*1.02. The Property.* The Condominium shall consist of the Land (as defined in this document) together with all improvements erected and to be erected thereon, including the Buildings, subject to and reserving all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, intended for use in connection therewith (collectively, the "Property").

*1.03. Association Established.* Declarant also establishes The Association of the Shops at MaBe, a Condominium, (the "Association") an association of the Condominium Unit Owners to operate The Shops at MaBe, a Condominium, pursuant to this document and the By-Laws attached hereto as Exhibit C. The By-Laws set forth detailed provisions governing the operation, use and occupancy of the Condominium (said By-Laws, as they may be amended from time to time, are hereinafter referred to as the "By-Laws"). The By-Laws describe that a Board of Managers be elected or appointed who shall manage the affairs of the Association.

**ARTICLE II  
COUNTY AND PROPERTY DESCRIPTION**

*2.01. County.* The Property is located in the County of San Juan, New Mexico.

*2.02. The Land.* The Property includes all of that certain tract of land (the "Land") situate, lying and being in the City of Farmington, County of San Juan and State of New Mexico,



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and more particularly described in Exhibit A-1 annexed hereto and made a part hereof. The Land is owned by Declarant in fee simple absolute.

2.03. *Additional Phase.* Declarant has plans to expand the Condominium in the area more particularly described in Exhibit A-2, and shown on Exhibit B-2, both of which are annexed hereto and made a part hereof (the "Additional Phase").

### ARTICLE III UNITS

3.01. *Buildings.* Erected upon the Land, and included in the Property, is one building with the following address: 5920 East Main Street, Farmington, New Mexico 87402. This building, and any future buildings are referred to collectively as the "Buildings" and individually as "Building" and specifically by each Building's particular address.

3.02. *Maximum Units.* The maximum number of Units shall be ten (10).

3.03. *The Units.* The Building is divided into three (3) units, lettered A, B and C. Exhibit B-1 sets forth the description and information for proper identification of each Unit and each Unit's percentage interest in the Common Elements. These Units are for commercial purposes only and are hereinafter collectively referred to as the "Units" and individually as a "Unit". The owner of a Unit at any time, or its designee, is herein called a "Unit Owner" and are collectively called the "Unit Owners".

3.04. *Legal Description of the Units.* The specific boundaries of each Unit are more completely described on Exhibit B-1, and are shown on Exhibit B-2. A Unit's boundaries shall be as defined in the Plat and Plans (if any), Exhibit B-1, Exhibit B-2, and this document; should any ambiguity concerning a Unit's boundaries exist after consulting these items, then the definition of boundaries from the Condominium Act shall control.

3.05. *Included in Unit.* Each Unit includes, and each Unit Owner shall be responsible for, the front entrance door, and any other entrance doors and windows to such Unit. A Unit Owner shall be responsible for all things inside a unit, including but not limited to smoke detectors, interior walls, plumbing, gas and heating fixtures, all lighting and electrical fixtures and appliances (including refrigerators and dishwashers). A Unit includes the heating, ventilating and air conditioning ("HVAC") units (including the fans inside the units) which serve the Unit.

3.06. *Interior Appearance of Unit.* Except to the extent inconsistent with Article IV, the By-Laws, or prohibited by law, each Unit Owner will have the right, exercisable at any time, to install, at such Unit Owner's sole cost and expense, decorations, fixtures and coverings (including, without limitation, painting, finishing, wall to wall carpeting, pictures, mirrors, shelving and lighting fixtures) on the surfaces of the walls, ceilings and floors that face the interior of such Unit and to a depth of one inch behind such surfaces for the purposes of installing nails, screws, bolts and the like, provided that no such installation shall impair the structural integrity and mechanical and electrical systems of such Unit or of the Building.

3.07. *Interior Arrangement, Combination of Units.* Except to the extent inconsistent with Article IV or the By-Laws or prohibited by law, each Unit Owner shall have the right, subject to the approval of the Association, which shall not be unreasonably withheld, to: (1) change the layout or number of rooms in the Unit from time to time; (2) combine any of the Units (or subdivide any previously combined Units); provided, however, that the percentage interest in the Common Elements of any portion of the Unit owned by another Unit Owner shall not be



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changed by reason thereof. If an amendment to the Declaration is required for subdivision of a Unit, the Unit Owner seeking such subdivision shall pay the Association's costs and legal fees related to the preparation, execution and recording of such amendment.

3.08. *Unit Changes to Comply With Law; Association Held Harmless.* A Unit Owner shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Association, its board of managers, its agents, and all other Unit Owners harmless from any liability arising from operation of, alterations to, and changes to the Unit.

3.09. *Related Facilities.* The Unit will include all related facilities exclusively serving the Unit including outdoor signs and monument signage panels for the Unit. Placement of exterior signs and monument signage panels are subject to the restrictions set forth in the Bylaws.

3.10. *Fee Simple Ownership of Unit.* As of the date of the filing of this Declaration with the Clerk of the County of San Juan, fee simple absolute title shall automatically vest in Declarant in all Units, individually and collectively, without the need to execute specific and particular deeds or indentures for each and every Unit.

**ARTICLE IV  
COMMON ELEMENTS**

4.01. *Common Elements for Common Use.* The common elements of the Condominium (the "Common Elements") consist of the entire Property, including the Land and all parts of the Buildings and improvements thereon other than the Units. The Common Elements include, but are not limited to those interior and exterior rooms, areas, corridors, open and closed spaces, parking areas, the public fountain, awnings, sidewalks, mechanical rooms, fire/sprinkler control rooms, and other parts of the Property for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, maintenance or safety of the Property. The Common Elements are appurtenant to, serve and benefit each Unit to the extent of such Unit's percentage share of the Common Elements. The Common Elements are for the common use of all Unit Owners.

4.02. *Common Elements Undivided.* The Common Elements will remain undivided and no Unit Owner or other person will bring or will have the right to bring any action for partition or division thereof except as may be specifically provided for herein and in the By-Laws.

4.03. *Components of Common Elements* The Common Elements include the following, even if contained within a Unit:

All foundations, footings, columns, girders, floor slabs and ceilings, beams, and supports and interior load bearing walls together with the exterior walls of the Buildings.

Main water utility connections and sewer connections and storm drains.

Any fireplugs, fire standpipes or riser control valves.

Lighting equipment which illuminates the exterior portions of the Property.

Exterior trash containment areas.

All exterior sidewalks, passages, mechanical and other rooms and areas located at the Property serving or benefiting the Units.



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The monument sign.

Any other facilities at the Property which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Units and are not a part of any Unit.

4.04. *No Limited Common Elements.* There are no Limited Common Elements designated on the Property, and none are planned. To the extent any Limited Common Elements are created by law or the Association, then they shall be treated as Common Elements are in this Declaration.

## ARTICLE V USE AND RESTRICTIONS ON TRANSFER

5.01. *Lawful Purposes Only.* A Unit may only be used for lawful purposes as allowed by applicable zoning ordinances, this Declaration, the By-Laws, and rules established by the Association, unless otherwise approved in advance by the Association. Before a Unit may be used for operation of a business it must obtain all the necessary permits and licenses, and approval by the Board of Managers as set forth in the Bylaws.

5.02. *Permissible Use.* The Units may be used for retail sales purposes only. A Unit may be used as a restaurant only with prior written approval of the Association.

5.03. *Prohibited Uses.* A Unit Owner may not:

(a) injure, overload, deface, or otherwise harm the Property, or commit any nuisance thereon;

(b) unreasonably annoy owners or occupants of neighboring property; nor use the Property for any hazardous purpose or in any manner that will suspend, void, or make inoperative any policy or policies of insurance at any time carried on any improvements or in any manner which will increase the cost of any of the Association's insurance, nor burn any trash or refuse;

(c) sell, distribute, or give away any product in the common areas, nor make any use of the Property which is improper, immoral, offensive, or contrary to any law or ordinance or any regulation of any governmental authority, and without prior approval of the Association;

(d) conduct any fire sale, auction, or similar sale on the Property without prior approval of the Association;

(e) use any system for the reception of music which has not been approved by the Association;

(f) load, unload, or park any truck or delivery vehicle in any common areas other than the area or areas designated therefor by the Association;

(g) use any sidewalks, walkways, entranceways to the Premises, or Common Elements for the storage or disposal of trash or refuse;

(h) conduct any business operation or any other operation of any nature whatsoever, nor place any object of any nature whatsoever outside a Unit without approval of the Association (such uses of such areas being reserved to the Association and its designees);



(j) place any fence, structure, barricade, building, improvement, division rail, or obstruction of any type or kind on any part of the Common Elements, sidewalks, walkways, and entranceways to the Property, or use the walks for any purpose other than pedestrian traffic; and

(k) install or use any writings, sign, or advertising device anywhere in, on, or in connection with the Property on any part of the exterior of the Property without Association approval, or do any act tending to injure the reputation of the Association.

*5.04. Leasing.* A Unit Owner shall have the right to lease the Unit, subject to the condition that the Unit Owner shall be liable for any violation of the Condominium Documents committed by the Unit Owner's tenant, without prejudice to the Unit Owner's right to collect any sums paid by the Unit Owner on behalf to the tenant. Any lease of a unit must be in writing and must be subject to the requirements of the Condominium Documents. Before a Tenant can open for business in a Unit, the Tenant's proposed use of the property must be approved by the Board of Managers of the Association.

*5.05. Right of First Refusal.* Subject to the exceptions in this Article, a Unit may be transferred only if a Unit Owner shall have first received a bona fide, written offer to purchase the his or her Unit from a third party, which the Selling Owner desires to accept (a "Third Party Offer"). Upon receipt of a Third Party Offer a Unit Owner shall deliver to the other Unit Owners and to the Association a written instrument in which the Selling Owner shall:

(a) State the Selling Owner's Intention to Transfer the Unit and to accept the Third Party Offer;

(b) State the price and material terms for the purchase of the Unit, and the name and address of the offeror;

(c) Warrant and represent that to the best of the Selling Owner's knowledge and belief, the Third Party Offer is a bona fide offer; and

(d) Offer to sell the Unit to the other Unit Owners on the same terms and conditions as are described in such Third Party Offer. Such instrument shall be accompanied by a true and correct copy of the Third Party Offer.

*5.06. Additional Prohibitions on Use.* The Association may make rules further limiting use of the Units and the Common Elements by Unit Owners, invitees, licensees, customers and employees. The Association may make rules restricting parking by Unit Owners and their employees.

*5.07. Purchase By Other Unit Owners.* At any time during the 20-day period after the delivery to the Association of the offer required by section 5.05, the other Unit Owners shall have the right to purchase the Unit in such proportions as they may agree among themselves. If there is not such agreement and more than one Unit Owner shall accept the offer within the 20-day period set forth above, then the Unit shall be made available for purchase first by the owners of contiguous units, and then to owners of the progressively more distant units. In the event owners of equally distant units each have accepted the offer to purchase the Unit, the Unit Owner of the unit with the larger proportion of interest in the Common Elements shall have the prior option to purchase the Unit, and if the Common Elements interests are equal, the Unit Owner with the prior option shall be determined by a coin toss conducted by the Association. If the Unit Owner having the prior option to purchase the Unit desires less than the entire Unit, that Unit Owner may elect to purchase the entire Unit on behalf of himself and any one or more other



Unit Owners. Acceptance of the offer to purchase the Unit shall be made by giving written notice thereof to the Selling Owner and the Association within 20 days after delivery of the Selling Owner's notice to the Association.

*5.08. Architectural Control.* Unit Owners acknowledge that Declarant, other Unit Owners, and the Association have a substantial interest in ensuring that the improvements within the Property enhance the Condominium and do not impair Declarant's or other Unit Owners' ability to market, sell, or lease a Unit. Therefore, each Unit Owner agrees to apply for permission of Declarant, its designee, or the Association (once Declarant is no longer in control) which must be obtained prior to changes to signage and exterior structure.

Declarant, or the Association (if Declarant is no longer in control) may make decisions regarding architectural control, or may designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. Such delegation may be to an architect or an architectural control committee. Any professional fees incurred in reviewing applications hereunder shall be paid by the applicant.

*5.09. Purchase by Third Party.* If the other Unit Owners do not accept the offer to purchase the Unit, the Selling Owner may, at any time within 90 days after the expiration of the 20-day period, sell the Unit to the offeror named in the Third Party Offer, on the terms and at the price stated in such offer, provided that the sale and conveyance is expressly made subject to the terms of the Third Party Offer. If the sale is not completed within such 90-day period, a new notice and opportunity to purchase shall be required before any Transfer is made of the Unit.

*5.10. When Right of First Refusal Does Not Apply.* The following persons or entities need not comply with the requirements of right of first refusal or a right of first offer:

- (a) Any other Unit Owner;
- (b) A spouse or descendent of the Unit Owner or a trust for the benefit of any one or more of such persons;
- (d) The owners of the Unit Owner in the case of the Unit Owner is an entity;
- (e) A corporation, partnership or limited liability company of which all of the capital stock, in the case of the corporation, or interest, in the case of a partnership or limited liability company, is owned by the Unit Owner and persons described in this section; or
- (f) The Declarant.

*5.11. Right of First Offer.* If a Unit Owner desires to transfer a Unit, the Unit Owner may offer to transfer the Unit, by offering first to all other owners of Units for an all cash sale, with no unique features which are not readily able to be complied with by other Unit Owners (a "First Offer"). If a First Offer is not accepted in accordance with this Section, the provisions of the Right of First Refusal shall not apply to the selling Unit Owner's transfer of the Unit, so long as:

- (a) within 120 days after making the First Offer, the selling Unit Owner enters into a binding written agreement to transfer the Unit on the terms contained in the First Offer except that the price paid shall be no less than the price contained in the First Offer and be paid in full in cash, certified check, wire transfer or title company check at closing with respect to the Transfer of the Unit; and



(b) closing on the transfer of the Unit takes place within 90 days after the date of execution of a binding written agreement for the transfer.

5.12. *Right of First Refusal.* A First Offer shall be delivered to the other Unit Owners and the Association with a written instrument in which the selling Unit Owner shall state the intention to transfer the Unit pursuant to the First Offer. At any time during the 20-day period after the delivery to the Association of the First Offer, the other Unit Owners shall have the right to purchase the Unit on the terms set forth in the First Offer in such proportions as they may agree among themselves. If there is no such agreement and more than one Unit Owner accepts the First Offer within the 20-day period set forth above, then the Unit shall be made available for purchase first by the owners of contiguous units, and the not owners of progressively more distant units. In the event owners of equally distant units have each accepted the First Offer, the Unit Owner of the unit with the larger Common Elements interest shall have the prior option to purchase the Unit, and if the Common Elements inters are equal, the Unit Owner with the prior option shall be determined by a coin toss conducted by the Association. If the Unit Owner having the prior option to purchase the Unit desires less than the entire Unit, that owner may elect to purchase the entire Unit on behalf of himself and any one or more other Unit Owners. Acceptance of the First Offer shall be made by giving written notice thereof to the Selling Owner and the Association within 20 days after deliver of the selling Unit Owner's notice to the Association.

**ARTICLE VI**

**DETERMINATION OF PERCENTAGE INTERESTS AND VOTING RIGHTS**

6.01. *Proportional Ownership of Common Elements.* Each Unit's proportion of square footage (as determined by each Unit's dimensions specified in this Declaration) in relation to the combined square footage of all Units is each Unit's "Proportional Ownership Interest". The aggregate Proportional Ownership Interest for all Units is 100%. This Proportional Ownership Interest shall be reallocated as necessary when Units are added or removed through eminent domain, future development, etc. Each Unit Owner shall own a share in the Common Elements based upon that Unit's Proportional Ownership Interest. Unless otherwise specified in the By-Laws, each Unit Owner shall be entitled to cast the number of votes equal to the Proportional Ownership Interest allocated to that Unit Owner.

6.02. *Equal Responsibility for Association Expenses.* Irrespective of a Unit Owner's Proportional Ownership Interest, all Units are to equally share Common Expenses (as determined and assessed by the Association), which are to be paid by each Unit Owner. Which shall be reallocated as necessary when Units are added or removed for whatever reason. Thus, if there are five units, then each Unit shall be assessed for 1/5 of the Common Expenses.

**ARTICLE VII**

**EXPANSION OF CONDOMINIUM PROPERTY BY DECLARANT**

7.01. *Reservation of Option to Expand Property.* This Condominium, as planned and envisioned by the Declarant, is intended to expand to include the Additional Phase shown on Exhibit A-2, which is currently in use as a paved parking area, and cared-for as a Common Element. Declarant reserves the right, at Declarant's exclusive option, to expand the Condominium upon all or a portion of the Additional Phase. Except as otherwise provided in this Article, there are no limitations on the exercise of said option, including, but not limited to, no limitation requiring the consent of any Unit Owner. Said option shall expire ten (10) years after



the Declaration is filed for record. There are no circumstances under which said option will terminate prior to the expiration of the above-described time limit, except that Declarant may elect at any time to terminate said option.

*7.02. Planned Phase II.* All or a portion of the Additional Phase may be used in connection with the complete development of the Condominium, and added to the Property accordingly. Different portions of the Additional Phase may be added to the Condominium at different times, in phases, so that the entire contemplated development may proceed in an orderly fashion. However, the Declarant is under no legal obligation or duty to add any of such Additional Phase to the Condominium and may add or decline to add any such portion of the Additional Phase the unrestricted and uncontrolled discretion of Declarant. There are no limitations with respect to the boundaries of portions of the Additional Phase that may be added, or with respect to the order in which portions may be added; provided, however, that the Additional Phase is already contained within the Property, and is subject to development by the Declarant. There are no limitations as to the location of any improvements contemplated to be constructed on any portion of the Additional Phase. Declarant reserves the right to change the design of structures and buildings to be constructed and the order of additions to the Condominium Property of portions of the Additional Phase. During development of the Additional Phase, the Association shall grant Declarant a license or easement as necessary.

*7.03. Planned Additional Units.* The Additional Phase is owned by Declarant, zoned for commercial use, and taxes are paid by Declarant required by law and described in Article XVI. A total of six (6) additional Units may be constructed in the Additional Phase.

*7.04. Additional Improvements.* With respect to improvements, other than structures, to any portion of any of the Additional Phase, the Declarant reserves the right to make such improvements as Declarant deems necessary, if any. There are no restrictions or limitations upon improvements that may be made except that Declarant intends that such improvements, if made, will be of substantially the same kind, style and quality as exist with respect to the Property.

*7.05. Quality of Additional Units.* With respect to all Units to be constructed on any portion of the Additional Phase, all such Units are intended to be compatible with the Units contained within the Property when and if initially constructed in accordance with this Declaration. Design shall not be deemed to be incompatible because of changes in the number of Units, changes in interior layout of Units, or variances in set-backs or relations of structures to other improvements.

*7.06. Additional Common Elements.* All or any portion of the Common Elements designated on any portion of the Additional Phase shall become Common Elements of the entire Property and may not become Limited Common Elements. It is anticipated that the type of Common Elements on the Additional Phase will be substantially of the same type as those designated on the Property. The size and number of such newly created Common Elements cannot be ascertained precisely because those facts will depend on how large each portion to the Additional Phase added to the Property may be, the size and location of the buildings and other improvements on each portion, and other factors presently undetermined.

*7.07. Amendment of Declaration for Phase II.* All or any portion of the Additional Phase shall be added to the Property by filing an amendment to this Declaration, which contains the information, Drawings and other items required by law, this Declaration and the By-Laws, and which allocates and reallocates the fractions of undivided interest in the Common Elements



appurtenant to each Unit on the real estate previously recorded and for each Unit constructed or to be constructed on a portion of the Additional Phase added by said amendment. Said amendment shall uniformly reallocate said undivided fractional interests in the Common Elements pursuant to the formula described below.

7.08. *Reallocation of Interest.* The fractional interest of each Unit Owner in the Common Elements shall be allocated and reallocated so that at all times the percentage interest is based upon each Unit's proportion of square footage (as determined by each Unit's dimensions) in relation to that of all Units. The aggregate common interest for all Units shall be 100%. Such amendment shall be executed by the Declarant in recordable form and filed for record, and shall be effective on the date on which it is filed for record.

**ARTICLE VIII  
ENCROACHMENTS**

If (a) any portion of the Common Elements encroaches upon any Unit or upon any other Common Element, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or (c) any such encroachments shall hereafter occur as a result of (i) settling or shifting of the Building, (ii) any alteration, repair or restoration of the Common Elements made by or with the consent (when required by the By-Laws) of the Association or made by Declarant, a Unit Owner in accordance with this Declaration or the By-Laws or (iii) any alteration, repair or restoration of the Buildings (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same as long as the Building shall stand.

**ARTICLE IX  
ACCESS TO COMMON ELEMENTS**

Each Unit Owner shall have an easement in common with all other Unit Owners to use, maintain, repair, alter and replace all Common Elements located in any of the other Units or elsewhere on the Property which serve that Unit Owner's Unit including an easement to connect to existing utilities. Each Unit shall be subject to an easement in favor of all Unit Owners to use, maintain, repair, alter and replace all Common Elements located in such Unit or elsewhere on the Property which serve other Units. In addition, the Association or its agents, to the extent such it is permitted to act by the By-Laws for such purposes, shall have a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common Elements contained therein or elsewhere in the Property. All easements and rights of access described in this Article shall be exercised in such a manner as will not unreasonably interfere with the normal conduct of business of the tenants and occupants Units for their permitted purposes. Such entries shall be permitted on not less than one day's notice, except that no notice will be necessary in the case of an "emergency" (i.e., a condition requiring repair or replacement immediately necessary for the preservation or safety of the Building or for the safety of occupants of the Building, or other persons, or required to avoid the suspension of any necessary service in the Building).



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## ARTICLE X EASEMENTS

*10.01. Exclusive Use of Common Elements.* Except as set forth in this Declaration, each Unit Owner shall have, in common with all other Unit Owners, an easement for the exclusive use of the Common Elements.

*10.02. Ingress, Egress and Use.* Each Unit Owner shall have, in common with all other Unit Owners, an easement for ingress, egress, and for the use of any Common Element.

*10.03. Support and Necessity.* Each Unit and the Common Elements shall have an easement of support (including subjacent support) and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.

*10.04. Advertising, Signs.* Declarant and the Unit Owners and their successors and assigns shall, to the extent permitted by law, have an easement to erect, maintain, repair and replace, from time to time, one or more signs on the Property for the purposes of advertising (i) the sale or lease of any Unit and (ii) the operation of any business of a tenant or occupant of all or any portion of any Unit. Any signs placed on the exterior walls of any building, other sign areas, and in the monument sign, shall only be placed in designated places as allowed by the Association, and must be in the form approved-of by the Association.

*10.05. Other Easements.* Declarant and the Association shall have the right to grant such additional easements for utilities or otherwise or relocate any easements as Declarant, or the Association shall deem necessary for the proper operation and maintenance of the Buildings, or for the general health or welfare of the owners of the Units, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the normal conduct of business, and shall not result in the imposition of any mechanic's lien against any of the Units. Any utility company and its employees and agents shall have the right of access to any Unit or the Common Elements in furtherance of such easement, provided such right of access shall be exercised in such manner as shall not unreasonably interfere with the normal conduct of business.

*10.06. Maintenance & Repairs.* Declarant shall have, and the Units and Common Elements shall be subject to, an easement, to maintain any encroachment on any Unit, or any Common Elements or elsewhere on the Property resulting from the installation, operation, maintenance, repair, alteration, rebuilding, restoration or replacement thereof; provided that access to any Unit or Common Element in furtherance of such easement shall be exercised in a manner as will not unreasonably interfere with the normal conduct of business. Such entry shall be permitted on not less than one day's notice, except that no notice will be necessary in the case of an emergency.

*10.07. Declarant's Rights.* Declarant shall own and control all rights and interests, and shall be responsible for all obligations and liabilities, appurtenant to the name of the Condominium and/or the Building. For so long as Declarant owns any Units in the Building, only Declarant shall have the right to change or assign the name of the Condominium and/or the Building, subject to the consent of the Association.



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**ARTICLE XI**  
**COVENANTS RUNNING WITH THE LAND**

*11.01. Declaration and By-Laws Perpetual Covenants.* All provisions of this Declaration, and the By-Laws which are annexed hereto and made a part hereof, including, without limitation, the provisions of this Article, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and that owner's heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public. All present and future owners, tenants, subtenants, licensees, and other occupants of Units shall be subject to and shall comply with the provisions of this Declaration, and the By-Laws, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration and the By-Laws, as they may be amended from time to time, are accepted and ratified by such owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease or use and occupancy agreement thereof.

*11.02. Severability; Binding.* If any provision of this Declaration or the By-Laws is invalid under, or would cause this Declaration and the By-Laws to be insufficient to submit the Property to the provisions of, the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act but shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land. If any provision which is necessary to cause this Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as part of this Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act.

*11.03. Effect if Invalid.* If this Declaration and the By-Laws are insufficient to submit the Property to the provisions of the Condominium Act, the provisions of this Declaration and the By-Laws shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property, and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of this Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land.



**ARTICLE XII  
AMENDMENTS OF DECLARATION**

This document may be amended as set forth in NMSA 1978, § 47-7B-17 (1982), of the Condominium Act.

**ARTICLE XIII  
SUBORDINATION OF CONDOMINIUM LIENS**

The Association may lien any Unit which has failed to make payments to the Association. Upon request, the Association may agree to subordinate to a mortgagee its liens against a Unit or Unit Owner for assessments against a Unit or Unit Owner.

**ARTICLE XIV  
TERMINATION OF CONDOMINIUM**

The Condominium shall continue and the Property shall not be subject to an action for partition (unless terminated by casualty loss, condemnation or eminent domain, as more particularly provided in the By-Laws) until such time as withdrawal of the Property from the provisions of the Condominium Act is authorized by a vote of at least 80% in number and in common interest of all Unit Owners. No such vote shall be effective, however, without the written consent of Declarant, until such time as Declarant has conveyed title to all Units. In the event said withdrawal is authorized as aforesaid, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective common interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid from out of that Unit Owner's share of such net proceeds all liens on that Unit Owner's Unit in the order of priority of such liens.

**ARTICLE XV  
WAIVER**

No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**ARTICLE XVI  
PROPERTY TAXATION**

*16.01. Taxation of Units and Common Elements.* As permitted by NMSA 1978, § 47-7A-5 (1983), ad valorem levies, special assessments, property taxes, or other taxes assessed against the property shall be assessed against each Unit and its percentage of undivided interest in the common elements shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district.

*16.02. Additional Phase.* As required by New Mexico law, because the Additional Phase will be built on an area currently designated as Common Element, the land comprising the Additional Phase will be taxed separately from the rest of the Condominium, and taxes for the Additional Phase will be paid by Declarant. Upon completion of the Units in the Additional Phase, the Units will be taxed individually, and any area in the Additional Phase designated as Common Elements shall be assessed as Common Elements for the entire Condominium, with taxes recalculated and paid as set forth above.



**ARTICLE XVII  
CAPTIONS**

The captions herein and in the By-Laws are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

**ARTICLE XVIII  
SEVERABILITY**

If any provision of this Declaration is invalid or unenforceable as against any person or under certain circumstances, the remainder of this Declaration and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of this Declaration shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law.

**ARTICLE XIX  
SUCCESSORS AND ASSIGNS**

Except as set forth herein or in the By-Laws to the contrary, the rights and/or obligations of Declarant as set forth herein shall inure to the benefit of and be binding upon any successor or assign of Declarant. The rights and/or obligations of the Unit Owners as set forth herein shall inure to the benefit of and be binding upon any successors or assigns of the Unit Owner. Subject to the foregoing, Declarant, and/or a Unit Owner shall have the right, at any time, to assign or otherwise transfer its respective interests herein, whether by sale, merger, consolidation, lease, assignment or otherwise.

**ARTICLE XX  
CONSENTS**

Whenever the consent, approval, satisfaction or permission of Declarant is required under this Declaration or the By-Laws, such consent, approval, satisfaction or permission will not be required when Declarant no longer owns any Units.

**ARTICLE XXI  
INCORPORATION BY REFERENCE AND DEFINITIONS**

*21.01. Exhibits.* The terms, covenants, conditions, descriptions and other information contained in (i) the property description annexed hereto as Exhibit A-1; (ii) the property description of the Additional Phase annexed hereto as Exhibit A-2; (iii) the description of the Units and map of the Condominium annexed hereto as Exhibits B-1 and Exhibit B-2; (iv) the By-Laws annexed hereto as Exhibit C; (v) the Ownership of Common Elements and Voting Rights annexed hereto as Exhibit D; and (vi) the Plat and Plans (if any), are each incorporated herein by this reference and made a part of this Declaration as if set forth at length in the text hereof.

*21.02. Declarant.* "Declarant" shall include the Declarant (identified above) or its designees, successors or assigns.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the 17th day of June, 2008.

Declarant:



**EXHIBIT A-1**  
**DESCRIPTION OF THE LAND**

Lot 2C of Villa View Plaza Replat "C" Situated in the Northeast Quarter of the Northeast Quarter (NE ¼ NE ¼) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico.



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**EXHIBIT A-2**  
**DESCRIPTION OF THE ADDITIONAL PHASE**

The additional phase consists of two units which will occupy the below described property:

SUITE D

A tract of land situated in the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

COMMENCING at the most easterly corner of Lot 2C of Villa View Plaza, Replat "C" as filed for record in Book 1474, page 98, on April 30, 2008, a point on the northern right-of-way of U.S. Highway 516 (East Main Street);

THENCE: ALONG the southern boundary of said Lot 2C and the northern right-of-way and S58°34'01"W for a distance of 180.53 feet;  
THENCE: LEAVING said southern boundary and the northern right-of-way and N31°18'16"W for a distance of 91.44 feet;  
THENCE: N58°41'44"E for a distance of 84.00 feet to the True Point of Beginning of Suite D;  
THENCE: N31°18'16"W for a distance of 30.20 feet to a point on the centerline of a common wall between Suite C and Suite D;  
THENCE: ALONG said common wall centerline and N58°41'44"E for a distance of 52.00 feet;  
THENCE: LEAVING said common wall centerline and S31°18'16"E for a distance of 31.16 feet to the centerline of a common wall between Suite D and Suite E;  
THENCE: ALONG said common wall centerline and S58°41'44"W for a distance of 52.00 feet;  
THENCE: LEAVING said common wall centerline and N31°18'16"W for a distance of 0.96 feet and back to the point of beginning.  
Said tract of land contains 1,620 square feet, more or less.

SUITE E

A tract of land situated in the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

COMMENCING at the most easterly corner of Lot 2C of Villa View Plaza, Replat "C" as filed for record in Book 1474, page 98, on April 30, 2008, a point on the northern right-of-way of U.S. Highway 516 (East Main Street);

THENCE: ALONG the southern boundary of said Lot 2C and the northern right-of-way and S58°34'01"W for a distance of 180.53 feet;



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THENCE: LEAVING said southern boundary and the northern right-of-way and  
N31°18'16"W for a distance of 91.44 feet;  
THENCE: N58°41'44"E for a distance of 78.00 feet to the True Point of Beginning of Suite  
E;  
THENCE: CONTINUING N58°41'44"E for a distance of 6.00 feet;  
THENCE: S31°18'16"E for a distance of 0.96 feet to the centerline of a common wall  
between Suite D and Suite E;  
THENCE: ALONG said common wall centerline and N58°41'44"E for a distance of 52.00  
feet;  
THENCE: LEAVING said common wall centerline and N31°18'16"W for a distance of 0.46  
feet;  
THENCE: N58°41'44"E for a distance of 18.00 feet;  
THENCE: S31°18'16"E for a distance of 62.50 feet;  
THENCE: S58°41'44"W for a distance of 74.00 feet;  
THENCE: S31°18'16"E for a distance of 2.46 feet;  
THENCE: S58°41'44"W for a distance of 6.82 feet;  
THENCE: N31°18'16"W for a distance of 17.81 feet;  
THENCE: N58°41'44"E for a distance of 4.82 feet;  
THENCE: N31°18'16"W for a distance of 47.66 feet and back to the point of beginning.  
Said tract of land contains 4,820 square feet, more or less.



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**EXHIBIT B-1  
DESCRIPTION OF THE UNITS**

SUITE A

A tract of land situated in the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

COMMENCING at the most easterly corner of Lot 2C of Villa View Plaza, Replat "C" as filed for record in Book 1474, page 98, on April 30, 2008, a point on the northern right-of-way of U.S. Highway 516 (East Main Street);

- THENCE: ALONG the southern boundary of said Lot 2C and the northern right-of-way and S58°34'01"W for a distance of 180.53 feet;
- THENCE: LEAVING said southern boundary and the northern right-of-way and N31°18'16"W for a distance of 205.58 feet to the True Point of Beginning of Suite A;
- THENCE: CONTINUING N31°18'16"W for a distance of 64.00 feet;
- THENCE: N58°41'44"E for a distance of 55.42 feet;
- THENCE: S31°18'16"E for a distance of 8.50 feet;
- THENCE: S58°41'44"W for a distance of 0.92 feet to the centerline of a common wall between Suite A and Suite B;
- THENCE: ALONG said common wall centerline and S31°18'16"E for a distance of 50.00 feet;
- THENCE: LEAVING said common wall centerline and N58°41'44"E for a distance of 0.92 feet;
- THENCE: S31°18'16"E for a distance of 5.50 feet;
- THENCE: S58°41'44"W for a distance of 55.42 feet and back to the point of beginning. Said tract of land contains 3,501 square feet, more or less.

SUITE B

A tract of land situated in the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

COMMENCING at the most easterly corner of Lot 2C of Villa View Plaza, Replat "C" as filed for record in Book 1474, page 98, on April 30, 2008, a point on the northern right-of-way of U.S. Highway 516 (East Main Street);

- THENCE: ALONG the southern boundary of said Lot 2C and the northern right-of-way and S58°34'01"W for a distance of 180.53 feet;
- THENCE: LEAVING said southern boundary and the northern right-of-way and N31°18'16"W for a distance of 187.68 feet;

THENCE: N58°41'44"E for a distance of 78.50 feet to the True Point of Beginning of Suite B;

THENCE: N31°18'16"W for a distance of 23.50 feet;

THENCE: S58°41'44"W for a distance of 24.00 feet to a point on the centerline of a common wall between Suite A and Suite B;

THENCE: ALONG said common wall centerline and N31°18'16"W for a distance of 50.00 feet;

THENCE: LEAVING said centerline and N58°41'44"E for a distance of 40.00 feet;

THENCE: S76°18'16"E for a distance of 48.08 feet;

THENCE: S31°18'16"E for a distance of 40.46 feet to a point on the centerline of a common wall between Suite B and Suite C;

THENCE: ALONG said common wall centerline and S58°41'44"W for a distance of 50.00 feet;

THENCE: LEAVING said common wall centerline and N31°18'16"W for a distance of 0.96 feet and back to the point of beginning.

Said tract of land contains 4,345 square feet, more or less.

SUITE C

A tract of land situated in the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4) of Section 31, T30N, R12W, N.M.P.M., Farmington, San Juan County, New Mexico, being more particularly described as follows:

COMMENCING at the most easterly corner of Lot 2C of Villa View Plaza, Replat "C" as filed for record in Book 1474, page 98, on April 30, 2008, a point on the northern right-of-way of U.S. Highway 516 (East Main Street);

THENCE: ALONG the southern boundary of said Lot 2C and the northern right-of-way and S58°34'01"W for a distance of 180.53 feet;

THENCE: LEAVING said southern boundary and the northern right-of-way and N31°18'16"W for a distance of 187.68 feet;

THENCE: N58°41'44"E for a distance of 72.50 feet to the True Point of Beginning of Suite C;

THENCE: CONTINUING N58°41'44"E for a distance of 6.00 feet;

THENCE: S31°18'16"E for a distance of 0.96 feet to the centerline of a common wall between Suite B and Suite C;

THENCE: ALONG said common wall centerline and N58°41'44"E for a distance of 50.00 feet;

THENCE: LEAVING said common wall centerline and N31°18'16"W for a distance of 0.46 feet;

THENCE: N58°41'44"E for a distance of 26.50 feet;

THENCE: S31°18'16"E for a distance of 66.00 feet;

THENCE: S58°41'44"W for a distance of 19.00 feet;

THENCE: N31°18'16"W for a distance of 0.46 feet to the centerline of a common wall between Suite C and Suite D;



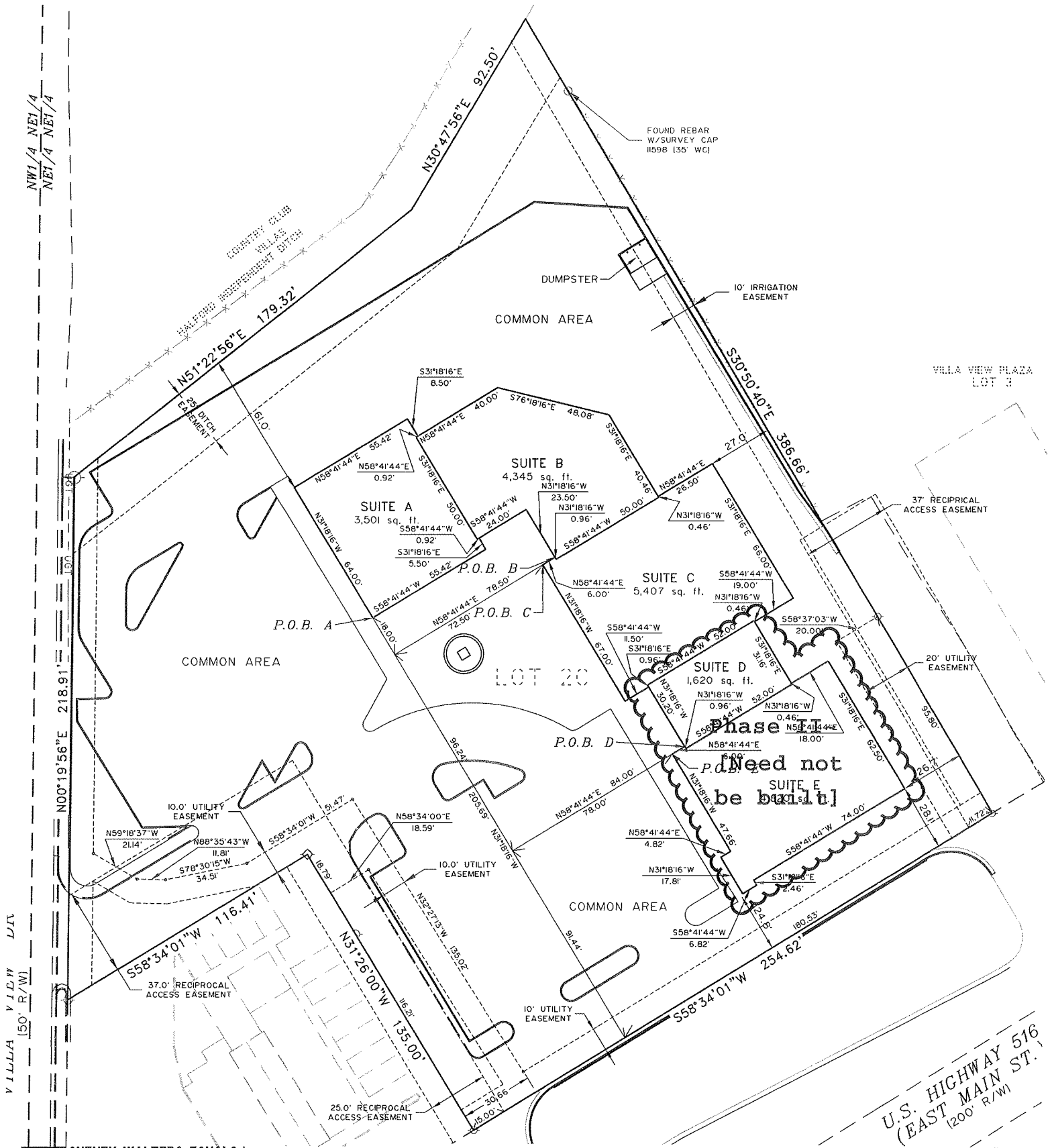
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THENCE: ALONG said common wall centerline and S58°41'44"W for a distance of 52.00 feet;  
THENCE: LEAVING said common wall centerline and S31°18'16"E for a distance of 0.96 feet;  
THENCE: S58°41'44"W for a distance of 11.50 feet;  
THENCE: N31°18'16"W for a distance of 67.00 feet and back to the point of beginning.  
Said tract of land contains 5,407 square feet, more or less.



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EXHIBIT B-2



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**BYLAWS  
OF THE  
ASSOCIATION OF THE SHOPS AT MABE, A CONDOMINIUM**

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**Article I**  
**Purpose and Definitions**

The purpose of these Bylaws is to provide for the establishment of a Condominium Unit Owners Association for the government of The Shops at MaBe, a Condominium, as described in that Condominium’s Declaration and these Bylaws, all of which shall be subject to the covenants, provisions and/or regulations contained in the Declaration and these Bylaws and shall be further subject to any and all restrictions, conditions and/or regulations hereafter adopted by the Association.

These Bylaws are executed pursuant to the Declaration of the Shops at Mabe, a Condominium. The principal office of the Association and the place of meeting of the Association, and Board of Managers shall be at 5920 East Main Street, Farmington, New Mexico



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or at such place in San Juan County, New Mexico, as the Association may from time to time designate. For the purpose of these Bylaws, the definition of any and all words, terms and/or phrases which appear or are used in these Bylaws and are defined in the Declaration shall have the same meaning in these Bylaws as set forth in the Declaration. In the event any words, terms and/or phrases are not defined in the Declaration and are defined in the New Mexico Condominium Act, NMSA 1978, §§ 47-7A-1 to -7D-20 (1982, 1983) (the "Condominium Act"), then such words, terms and/or phrases shall have the same meaning herein as set forth in the Condominium Act.

## **Article II The Association**

*2.01. Name and Nature of Association.* The Association shall be an unincorporated association and shall be called the "Association of the Shops at MaBe, a Condominium" (the "Association.")

*2.02. Membership.* Membership of the Association shall consist of all the Unit Owners in the Property. Each Unit Owner shall have voting rights equal the respective percentage interest in the Common Elements shown for that Unit Owner's Unit in the Declaration. If a Unit Owner owns more than one Unit, then the voting rights is equal to the sum of the percentage interests allocated to the Units owned by that Unit Owner. No purchaser of a Unit shall be deemed a Unit Owner until the sale and purchase of such Unit has been consummated by the payment of the purchase price or such portion thereof as is required by the terms of the Purchase Agreement.

*2.03. Membership Not Transferable.* A Unit Owner's membership in the Association shall not be transferable separate and apart from a transfer of the ownership of a Unit. The membership of each Owner in the Association shall terminate upon a sale, transfer or other disposition of a Unit Owner's Unit accomplished in accordance with the provisions of the Declaration, and all rights and privileges of membership in the Association, the Owner's Unit, and the Condominium Property shall cease on the termination of such membership, and thereupon the membership of such respective Unit Owner in the Association shall automatically transfer to and vest in the new succeeding Unit Owner. The Association may, but shall not be required to, issue certificates or other evidence of membership therein.

*2.04. Proxies.* Unit Owners may vote or act in person or by proxy. The person appointed as a proxy need not be a member of the Association. Designation by a Unit Owner of a proxy to vote or act on the Unit Owner's behalf shall be made in writing to the Board of Managers of the Association and shall be revocable at any time by actual notice to the Board of Managers by the Unit Owner or Unit Owners making such designation. Notice to the Board of Managers in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.

*2.05. Voting.* The percentage of the vote to which each Unit Owner is entitled is the voting percentage assigned to the Unit or Units the Unit Owner owns as set forth in the Declaration. There shall be one voting Unit Owner for each Unit in the Condominium. Such voting Unit Owner may be the Unit Owner or the group composed of all of the Unit Owners of a Unit, or any person who is designated as a proxy in accordance with Section 2.04. Fiduciaries for minors who are Unit Owners may vote their respective interests as Unit Owners. If two or more persons, whether fiduciaries, tenants in common, or otherwise, own undivided interests in a Unit, each may exercise the proportion of the voting power of all the Unit Owners that Unit that is



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equivalent to the proportionate interest in the Unit, provided that at or prior to the time of said vote notice is submitted to the Board of Managers, in writing, of the Unit Owner's ownership interest and desire to exercise a fractional share of the Unit's voting power separately from the rest of the voting power of the Unit.

2.06. *Majority of Owners.* As used in these Bylaws, the term "majority of Unit Owners" shall mean those Unit Owners owning at least fifty-five percent (55%) of the percentage of total votes in accordance with the percentages assigned to the Declaration.

2.07. *Quorum.* The presence at any meeting of the voting Unit Owners having seventy-five percent (75%) of the total votes shall constitute a quorum sufficient to conduct business. Unless otherwise expressly provided herein or in the Declaration, any action may be taken at any meeting of the voting Unit Owner upon the affirmative vote of the voting Unit Owner having a majority of the quorum present at such meeting. Votes may be cast in person or by proxy. The percentage of votes present by proxy shall be counted in determining whether a quorum is present.

### **Article III Board Of Managers**

3.01. *Number and Qualification.* The affairs of the Association shall be governed by the Board of Managers, which shall be composed of a minimum of three (3) persons and a maximum number equal to the total number of different Unit Owners. The number of managers shall be determined as necessary, given that any Unit Owner who wishes to be a member of the Board of Managers shall be a member (unless the Unit Owner is removed as a manager as provided in these bylaws). A member of the Board of Managers must be a Unit Owner, the spouse of a Unit Owner, or occupiers of a Unit who have attained the age of eighteen and is designated by the Unit Owner.

3.02. *Election and Term of Office.* The Declarant shall designate all of the Unit Owners of the Board of Managers to serve during the initial period during which the Declarant retains control of the Association, in accordance with the terms of Article IV, Section 4.01 below. After the termination of such period of control, the Managers shall thereafter be elected at each annual meeting of the Unit Owners. Only persons nominated as candidates shall be eligible for election as Managers, and the candidates receiving the greatest number of votes shall be elected. Each Unit Owner may vote for as many candidates as there are authorized numbers of positions to be filled in the Board of Managers. The Managers shall hold office for the term of one (1) year from the date of their election and until the election and qualification of their successors. The Board of Managers shall hold office until their successors have been elected and hold their first meeting. Notwithstanding Section 3.01 of this Article, or any other section of these Bylaws, the persons appointed by the Declarant to be Members of the Board of Managers during the initial period of control by the Declarant of the Association as set forth in this Section 3.02, may, but need not be, Unit Owners, spouses of Unit Owners, or occupiers of Units.

3.03. *Vacancies.* Vacancies in the Board of Managers caused by any reason other than the removal of a Manager by a vote of the Association shall be filled by vote of the majority of the remaining Managers, even though they may constitute less than a quorum; and each person so elected shall be a Manager until a successor is elected at the next annual meeting of the Association. In the event that a majority of the remaining Members of the Board do not agree upon the election of a successor within thirty (30) days of the occurrence of the vacancy, the



successor shall be elected by a vote of the majority of the percentages of voting power of the Unit Owners at a meeting of the Association.

3.04. *Removal of Managers.* At any regular or special meeting of Unit Owners of the Association duly called, at which a quorum shall be present any one or more of the Managers, except the Managers, if any, acting as a representative of the Declarant, may be removed for failure to participate in three consecutive meetings. Any Manager whose removal has been proposed by the Unit Owners of the Association shall be granted an opportunity to be heard at such meeting.

3.05. *Organizational Meeting.* Immediately after each annual meeting of Unit Owners of the Association, the newly elected Managers and those Managers whose terms continue shall hold an organizational meeting for the purposes of electing officers and transacting any other business. Notice of such meeting need not be given.

3.06. *Regular Meetings.* Regular meetings of the Board of Managers may be held at such time and place as shall be determined, from time to time, by a majority of the Managers, but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each Manager, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meetings. At such meetings, any and all business within the power of the Board may be transacted. The Board may establish appropriate rules for the order and conduct of their meetings and consideration and transaction of business in accordance with the Declaration and these Bylaws.

3.07. *Special Meetings.* Special meetings of the Board of Managers may be held at any time upon the request of the President or any two Managers. Notice of the time and place of each such meeting shall be given to each Manager either by personal delivery or by mail, facsimile or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting. Attendance of any Manager at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice, shall be deemed to be a waiver by that Manager of notice of such meeting, and such notice may be waived in writing either before or after the holding of such meeting, by any Manager, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any and all business may be transacted at any organizational, regular or special meeting.

3.08. *Waiver of Notice.* Before or at any meeting of the Board, any Manager may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Manager at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

3.09. *Board of Managers Quorum.* At all meetings of the Board, a majority of the Managers shall constitute a quorum for the transaction of business and the acts of the majority of the Managers present at a meeting at which a quorum is present shall be the acts of the Board of Managers. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.



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3.10. *Action of Managers Without a Meeting.* Any action required to be taken, or an action which may be taken, at a meeting of the Managers, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Managers entitled to vote with respect to the subject matter thereof.

3.11. *Powers and Duties of the Board of Managers.* The Board of Managers shall have the powers, authority and duties necessary for the administration of the affairs of the Association and the Condominium Property, and shall have all the powers, authorities and duties referred to in the Declaration, these Bylaws, and the Laws of New Mexico, as amended from time to time, and may do all acts and things provided by the Condominium Act to be done by the Board of Managers or by the Unit Owners collectively, except such acts or things as are by law, or the Bylaws, or the Declaration, directed to be exercised and done by the Unit Owners individually. The Board shall have the right, power and authority to:

(a) elect the officers of the Association; (b) administer the affairs of the Association and the Condominium Property; (c) take all actions deemed necessary or desirable to comply with all requirements of law, and the Condominium Instruments; (d) obtain insurance coverage no less than that required pursuant to the Declaration and the laws of New Mexico, together with such additional insurance as they shall deem appropriate; (e) enforce the covenants, conditions and restrictions set forth in the Declaration; (f) repair, maintain and improve the Common Elements; (g) establish, enforce, levy and collect assessments as provided in the Declaration; (h) adopt, amend and publish administrative rules and regulations governing the use of the Common Elements and the personal conduct of Unit Owners, occupants, and their guests therein, and establish penalties for the infraction thereof; (i) to estimate and adopt budgets and provide for the maintenance of books and records of account; (j) to suspend the voting rights of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any assessments levied by the Association; (k) declare the office of a Member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board; (l) at their option to engage the services of a manager, managing agent or management company, and to fix the terms of such engagement and the compensation and authority of such manager, managing agent or management company in order to facilitate the efficient operation and maintenance of the Condominium Property, it being the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration and the receipt and disbursement of funds as may be authorized by the Board, and to facilitate the levy and collection of assessments, the payment of common expenses, and the distribution of common dividends; (m) to do all things and take all actions permitted to be taken by the Association by law, the Declaration or these Bylaws, or such other actions not specifically reserved by the same to others.

3.12. *Duties.* It shall be the duty of the Board to:

(a) cause to be kept a complete record of its acts and corporate affairs and to present the statement thereof to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing by Unit Owners representing one-half ( ½ ) or more of the voting power of Unit Owners; (b) supervise all officers, agents and employees of the Association to the end that the duties delegated to said persons are properly performed; (c) as more fully provided in the Declaration, to: (1) fix the amount of assessments against each Unit; (2) provide written notice of each assessment to every Unit Owner subject thereto within the time limit set forth in the Declaration and according to the method set forth in the Declaration;



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(3) foreclose the lien against any property for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Unit Owners personally obligated to pay the same, or both; (d) issue, or cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid; (e) procure and maintain insurance as provided in the Declaration, and as the Board deems advisable; (f) cause all officers or employees who, from time to time, have the possession or responsibility for Association funds to be insured by adequate fidelity bonds, to the extent that the Board in its sole discretion deems such bonds advisable or necessary, and the premiums for such bonds shall be paid by the Association as a common expense; (g) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration; (h) cause the restrictions created by the Declaration to be enforced; and (i) take all other actions required to comply with all requirements of law and the Condominium Instruments.

*3.13. Nonliability of the Board of Managers.* The Members of the Board of Managers shall not be liable to the Unit Owners or to the Association or its Members for any mistake of judgment or for any acts or omissions made in good faith as such Managers. The Unit Owners and the Association shall indemnify and hold harmless each Member of the Board of Managers against all contractual liability to other persons or entities, arising out of contracts made by the Board of Managers on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration applicable to the Units or the Condominium Property or contrary to the Bylaws of this Association. The liability of any Unit Owner arising out of the aforesaid indemnity shall be limited to such proportion of the total liability as the Unit Owner's percentage of interest in the Common Elements relates to the total percentage of interest of all Unit Owners in the Common Elements.

#### **Article IV**

#### **Administration Of The Association**

*4.01. Annual Meeting.* The annual meeting of the Unit Owners of the Association for the election of the Board of Managers, the consideration of reports to be laid before such meeting, and transaction of such other business as may be properly brought before the meeting, shall be held at the principal office of the Condominium Property, if any, or such other suitable place, convenient to the Unit Owners, as may be designated by the Board of Managers and specified in the notice of such meeting. The first annual meeting of the Unit Owners of the Association shall be held as soon as practicable on the date selected by the Declarant and designated by notice to the Unit Owners. The annual meeting of the Association will be held each year on the third Tuesday of the month of June, unless such other time is designated by the affirmative vote of the majority of the Unit Owners, after due notice to all Unit Owner of the Association.

The Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Unit. Until the Unit Owners Association is established, the Declarant shall act in all instances where action of the Association or its officers is authorized or required by law or the Declaration. Not later than the time that Condominium Ownership Interests to which fifty percent (50%) of the undivided interest in the Common Elements appertain have been sold and conveyed by the Declarant in the Condominium development, the Association shall meet, and the Unit Owners, other than the Declarant, shall elect sixty-six and two-thirds percent (66 2/3%) of the Members of the Board of Managers, whichever is greater. Not later than the time that Condominium Ownership interests



to which ninety percent (90%) of the undivided interest appertain have been sold and conveyed, such Unit Owners shall elect one-hundred percent (100%) of the Members of the Board of Managers. When computing percentages of interest for purposes of this division, the percentage of interest to Common Elements shall be computed by comparing the number of Units sold and conveyed to the maximum number of Units that may be created if all of the possible Additional Property is added to the Condominium.

Except for the limitations stated above in this Section 4.01, the Declarant or persons designated by the Declarant, may appoint and remove the Members of Board of Managers and other officers of the Association, and exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Association, the Board of Managers, or other officers during the period of initial control by the Declarant. Such authorization and period of control will extend from the date of the establishment of the Association until the earlier of: (a) five (5) years; or (b) thirty (30) days after the sale and conveyance of Condominium Ownership Interests to which appertain ninety percent (90%) of the undivided interest in the Common Elements to purchasers in good faith for value.

Within thirty (30) days of the expiration of the period during which the Declarant exercises powers under this Section 4.01 the Association shall meet and elect all of the Board of Managers and all other officers of the Association. The persons so elected shall take office upon election. Neither the Association nor the Unit Owners will be subject to any management contract or agreement executed prior to the assumption of control as set forth in this Section 4.01 for more than one year subsequent to that assumption of control, unless such a contract or agreement is renewed by a vote of the Unit Owners pursuant to the Bylaws. Whenever elected Members of the Board of Managers of the Association take control of the Association, the Declarant shall deliver to such officers correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Elements and other common receipts and expenses, together with records showing the allocation, distribution, and collection of the common profits, losses and expenses among and from the Unit Owners.

*4.02. Special Meetings.* Special meetings of the Unit Owners of the Association may be held on any business day when called by the President of the Association or the Board of Managers of the Association, or by Unit Owners entitled to cast at least fifty-five percent (55%) of the votes of the Association. Upon request in writing delivered either in person or by certified mail or registered mail to the President or Secretary of the Association by any person or persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto written notice by personal delivery, mail or facsimile, of a meeting to be held on a date not less than seven (7) nor more than thirty (30) days after the receipt of such request, as such officer may fix. If such notice is not given within ten (10) days after the delivery or mailing of such request, the Unit Owners calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be held at the office of the Association or at such other place upon the Property or at such convenient place as shall be specified in the notice of such meeting. No business, except that business stated in the notice of such special meeting, shall be transacted at said meeting unless by a consent of two-thirds (2/3) of the Unit Owners present, either in person or by proxy.

*4.03. Quorum and Adjournment.* Except as may be otherwise provided by Law or by the Declarant, at any meeting of the Unit Owners of the Association, the Unit Owners of the Association entitled to exercise a majority of the voting power of the Association, present in



person or by proxy, shall constitute a quorum. No action may be authorized or taken by a lesser percentage than is required by law, by the Declaration, or by these Bylaws. The Unit Owners entitled to exercise a majority of the voting power represented at a meeting of Unit Owners, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

*4.04. Order of Business.* The order of business at all meetings of Unit Owner of the Association shall be as follows: (a) calling the meeting to order; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of Committees; (f) appointment of inspectors of election by the Chairman of the meeting; (g) election of Board of Managers; (h) unfinished and/or old business; (i) new business; and, (j) adjournment.

*4.05. Voting at Meetings.* Unless a different vote is required by express statutory provisions of the State of New Mexico, or by the Bylaws or the Declaration, each question presented at a meeting of Unit Owners shall be determined by a majority vote of the voting power of those present. With respect to all elections of the Board of Managers, each Unit Owner shall be entitled to cast a vote for each of the offices of Board of Managers to be elected at such meeting. Except as otherwise prohibited under the Condominium Act, the Declarant may exercise the voting rights with respect to any Units title to which is in the name of the Declarant.

*4.06. Vote by Business Entity.* The vote of any corporate, partnership, limited liability company or trust Unit Owner may be cast on its behalf by any officer, partner, member, beneficiary or proxy of such Unit Owner. An individual Unit Owner may appoint a proxy. Each proxy must be filed prior to or at the time proxies are called for at a meeting.

## **Article V Officers**

*5.01. Election and Designation of Officers.* The Board of Managers shall elect a President, a Vice President, a Secretary, and a Treasurer of the Association. The Managers may appoint such Assistant Treasurers or Assistant Secretaries or such other officers as in their judgment may be advisable. The officers may, but need not, be Members of the Board of Managers or of the Association. The Officers shall be elected by the affirmative vote of a majority of the Board of Managers.

*5.02. Term of Office; Removal; Vacancies.* The officers of the Association shall be elected annually by the Board of Managers at the first meeting of each new Board. Each officer shall hold office during the pleasure of the Board and perform such duties as the Board may prescribe. Upon an affirmative vote of a majority of the Members of the Board of Managers, any officer may be removed, either with or without cause, and a successor elected at any regular meeting of the Board of Managers, or at any special meeting of the Board called for such purpose. Any vacancy in any office may be filled by the Board of Managers by majority vote.

*5.03. President and Vice President.* The President shall be the chief executive officer of the Association. The President shall preside at all meetings of Unit Owners of the Association and shall preside at all meetings of the Board of Managers. Subject to instructions of the Board of Managers, the President shall have general executive supervision over the business and affairs of the Association. The President may execute all authorized deeds, contracts and other



obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Managers or otherwise provided for in the Declaration or these Bylaws. The President shall execute amendments to the Declaration on behalf of the Association. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Managers.

5.04. *Secretary.* The Secretary shall keep the minutes of all meetings of the Board of Managers and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board may direct, and he shall, in general, perform all the duties incident to the office of Secretary and such duties as the Board may prescribe. A copy of such minutes shall be posted in a place designated by the Board of Managers. The Secretary shall maintain records of the names and addresses of the Unit Owners and their respective percentages of interest in the Common Elements. The Secretary shall prepare, certify and record amendments to the Declaration on behalf of the Association.

5.05. *Treasurer.* The Treasurer shall have responsibility, on behalf of the Association, to keep correct and complete books and records of account, specifying the receipts and expenditures relating to the Commons Areas and Facilities and other common receipts and expenses, together with records showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Unit Owners. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of, the Association in such depositories as may from time to time be designated by the Board, and he shall perform such other duties as from time to time may be assigned to him by the Board of Managers. The Treasurer may be the same person as the Secretary.

5.06. *Duties of Officers May Be Delegated.* In the absence of any officer of the Association, or for any other reason the Board may deem sufficient, the Board of Managers may delegate all or part of the powers or duties of such officer to any Member of the Board or to the managing agent, if any.

**Article VI  
Maintenance And Repair**

6.01. *Repairs by Association.* The Board of Managers, or any agent or officer acting at the direction of the Board, shall have the authority either to hire permanent employees or to contract specifically for the performance of ordinary repairs and maintenance, or replacement necessary or incidental to the administration of the Common Element and Facilities, and to purchase the tools, implements and materials used in repair, maintenance, replacement, gardening and snow removal, and shall have authority to engage the services of a Manager, Management Company or Managing Agent.

6.02. *Repairs by Unit Owners.* Each Unit Owner shall promptly perform all maintenance and repair work within the Unit Owner's own Unit.

**Article VII  
Use and Architectural Control**

7.01. *Architectural Control.* The Board of Managers, or any agent or officer acting at the direction of the Board, shall have control over all architectural elements, shall have the authority either to hire permanent employees or to contract specifically for the performance of ordinary



repairs and maintenance, or replacement necessary or incidental to the administration of the Common Element and Facilities, and to purchase the tools, implements and materials used in repair, maintenance, replacement, gardening and snow removal.

7.02. *Use.* Because the Unit Owners acknowledge that the other Unit Owners have a substantial interest in ensuring that compatible uses of the Units enhances the Condominium and the other Unit Owners' ability to market, sell, or lease a Unit, the Board of Managers shall approve all proposed use of the Units. A Unit Owner, prospective Unit Owner, or prospective tenant of a Unit (if not a Unit Owner) shall notify the Board of Managers of a proposed use of a Unit, and the Board of Managers shall determine, within twenty days, whether the proposed use meets the purposes of the Condominium, is in keeping with other uses and classes of business in operation in the Condominium, is of a type which will draw patrons complimentary to the use of other Units, is not in impermissible competition with the current use of any Unit. Upon the Board of Managers' determination as to the acceptability of a proposed use it shall notify the Unit Owner as to whether the proposed use is acceptable. Any Unit Owner may notify the Board of Managers that the use of any Unit has changed from the use approved by the Board of Managers, and if such changed use is deemed unacceptable, then the Board of Managers may notify a Unit Owner that the current use is in noncompliance with approved use and then require the Unit Owner to bring the Unit's usage into compliance with the approved use within one month.. If a non-compliant Unit Owner fails bring a Unit's usage into compliance with the usage approved by the Board of Managers, then the Board of Managers may require the non-compliant Unit Owner to cease operations at the Unit. The Board of Managers may take whatever legal action is necessary to enforce its usage requirements.

**Article VIII**  
**Determination And Payment Of Common**  
**Expenses And Assessments; Books**

8.01. *Obligation of Unit Owners to Pay Common Expenses and Assessments.* It shall be the duty of every Unit Owner to pay a share of common expenses and assessments. Such share of the common expenses shall be as determined by the Association and will initially be assessed on a per capita basis (meaning each Unit equally shares the common expenses and assessments). Payment therefore shall be in such amounts and at such times as may be determined by the Board of Managers of the Association, as herein provided. A "Common Expense" shall include, without limitation, the cost of maintenance and repair of Common Elements, landscaping, snow removal, hazard insurance and liability insurance, salaries and fees of a management company or agents and employees, if any, the cost of tools, materials and equipment, bonding fees, the establishment of reserve funds if deemed necessary, and all other charges by the Board deemed necessary or appropriate to the proper functioning of the Condominium Property.

8.02. *Preparation of Estimated Budget.* Each year, on or before December 1, the Board shall estimate the total amount necessary to pay the cost of management fees, wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all such services in connection with the Condominium Property, together with such reasonable reserves for contingencies and replacements, if any, as the Board of Managers shall deem to be necessary, and shall on or before December 15th notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said estimated cash requirements shall be assessed to the Unit Owners on a per capita basis. On or before January 1st of the ensuing year, and the first day of each and every month of said ensuing year, each Unit



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Owner shall be obligated to pay to the Association, or as it may direct, the monthly amount determined to be payable that month as the appropriate amount of the annual common expenses for that year as well as the amount of any other assessment made pursuant to the terms of the Bylaws and Declaration. On or before the date of the annual meeting in each calendar year, the Board shall supply to all Owners an itemized accounting of the maintenance expenses actually incurred in the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Unit Owner's percentage of ownership in the Common Elements to the next monthly installments for common expenses due from Unit Owners under the then current year's estimate, until exhausted, and any net shortage shall be added according to each Unit Owner's percentage of ownership in the Common Elements to the installments due in the succeeding six (6) months after rendering of the accounting. The budget shall be established on an annual basis, but a different amount may be due for each month during the year in order that the common expenses per month, which each Unit Owner shall be required to pay, may be increased or decreased each month based on the annual budget and the amount then required for common expenses. Each Unit Owner recognizes that the initial costs for the maintenance and operation of the Condominium Property may be less for each particular month during the first two years after the filing of the Declaration.

*8.03. Reserve for Contingencies and Replacements.* The Association shall accumulate and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual budget shall be charged first against such reserve. If the estimated budget proves inaccurate for any reason, including nonpayment of any Unit Owner's assessment, the amount or amounts necessary to make it adequate shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessments shall become effective with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly assessment.

*8.04. Budget for the First Year.* The Board of Managers of the Association, at the time the Declaration is filed for record, shall be composed of Members designated by the Declarant, as set forth hereinbefore and pursuant to the provisions of the Condominium Act. The Board of Managers designated by the Declarant shall promptly prepare an estimated budget which will be consistent with the projected budget disclosed in the Disclosure Statement, and which will be the basis for determining the amount of the monthly common expenses which each Unit Owner shall be obligated to pay. Each year thereafter, the Board of Managers, whether designated by the Declarant or elected partially by the Declarant or Unit Owners as provided in the Condominium Act, the Declaration, and these Bylaws, shall prepare, as set forth above, an estimated budget for the following year. The initial budget may be prepared for the first two (2) years of the operation, but thereafter the estimated budget shall be on an annual basis.

*8.05. Failure to Prepare Annual Budget.* The failure or delay of the Association or Board to prepare or serve the annual or adjusted budget shall not constitute a waiver or release in any manner of any Unit Owner's obligation to pay the common expenses for maintenance costs and necessary reserves or any other charges herein provided, whenever the same shall be determined.



In the absence of any annual budget, the Unit Owners shall continue to pay the monthly common expenses at the existing monthly rate or rates established for the previous period until the first monthly common expense payment date which occurs more than ten (10) days after such new annual budget shall have been mailed or delivered.

*8.06. Books and Records for the Association.* The Association shall keep full and correct books, and the same shall be open for inspection by any Unit Owner or by any representative of a Unit Owner duly authorized in writing, at reasonable times and upon request of the Unit Owner. Upon ten (10) days' notice to the Board and upon payment of a reasonable fee, any Unit Owner shall be furnished a statement of account, setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

*8.07. Remedies for Failure to Pay Assessments.* If a Unit Owner is in default in the monthly payment of any of the aforesaid charges or assessments for common expenses for thirty (30) days, the Members of the Board may bring suit for and on behalf of themselves and/or as representatives of all Unit Owners and/or on behalf of the Association, to enforce collection thereof or to foreclose the lien therefor as provided in the Declaration. There shall be added to the amount due the cost of said suit, together with interest at the highest permitted rate and reasonable attorneys' fees to be fixed by the court. To the extent permitted by the Declaration, any decision of the court or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges, common expenses, and/or assessments, interest, costs and fees as herein provided, shall be a lien and/or charge against the Unit involved when payable, and may be foreclosed by an action brought in the name of the Association and/or its Board of Managers as in the case of foreclosure of liens against real estate, as provided in the Declaration. As provided in the Declaration, the Members of the Board of Managers and their successors in office, acting on behalf of the Association and/or other Unit Owners, shall have the power to bid on the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any holder of an encumbrance on a Unit may from time to time request in writing a written statement from the Board of Managers setting forth the unpaid common expenses and/or assessments with respect to the Unit covered by the Unit Owner's encumbrance, and said request shall be complied with promptly. Any holder of an encumbrance holding a lien on a Unit may pay any unpaid common expenses and/or assessments payable with respect to such Unit, and upon such payment such holder of said encumbrance shall have a lien on such Unit for the amounts paid at the same amount and with the same priority as the amount so paid.

*8.08. Original Monthly Assessments.* The original monthly assessments, which shall be increased or decreased by the Board of Managers from time to time in accordance with the provisions of these Bylaws, the Declaration, and the Condominium Act, shall be established. The monthly assessment shall be a common expense divided among and assessed against the Unit Owners in the percentages set forth in the Declaration for division of common expenses and profits.

*8.09. Initial Reserve Fund.* It is contemplated that a reserve fund may be created out of monthly assessments. This amount shall be nonrefundable, except to the degree that other assessments are refunded or distributed to Unit Owners of the Association.

*8.10. Additions, Alterations or Improvements by the Board.* Whenever, in the judgment of the Board, the Common Elements shall require additions, alterations or improvements (as opposed to maintenance, repair and replacement as set forth in the Declaration), the making of



such additions, alterations or improvements shall be subject to the prior approval of Unit Owners entitled to exercise not less than a majority of the voting power prior to the Board proceeding with such additions, alterations or improvements and prior to the Board entering into any binding contracts for the same. If approved, the cost shall be assessed to all Unit Owners as a common expense. Any additions, alterations or improvements costing Ten Thousand Dollars (\$10,000) or less may be made by the Board without approval of the Unit Owners, and the cost thereof shall constitute part of the common expenses.

8.11. *Special Services.* The Board may arrange for special services and activities for such Unit Owners and occupants as may desire to pay for the same, including, without limitation, the cleaning, repair and maintenance of the Units. The cost of any such special services or facilities shall be determined by the Board and may be charged directly to participating Unit Owners. The cost of any such special services may be charged directly to the participating Unit Owners at the time the services are rendered, or may be charged as an addition to the monthly maintenance fee.

### **Article IX Sale Or Withdrawal And Termination**

9.01. *Sale or Withdrawal.* Unless otherwise provided by any statute generally applicable to condominium properties, and applicable to this project, the Unit Owners by affirmative vote of at least eighty percent (80%) of the total vote, at a meeting of Unit Owners duly called for such purpose, may elect to sell the Property, as a whole, or to withdraw the Property from the provisions of these Bylaws, and said Declaration, and to terminate the same.

9.02. *Termination.* In the event the election is made to terminate these Bylaws and said Declaration and to withdraw the Property from its status as a Condominium and from the application of any statute relating to condominiums, then all of the Unit Owners (and their respective spouses, if applicable) shall duly execute, acknowledge and record an instrument setting forth the facts and circumstances, waiving dower and homestead rights insofar as such rights affect the exclusive ownership of any Unit, and expressly declaring their intention to withdraw the condominium Property. The instrument shall provide that titles to all Units shall thereby be conveyed and become vested in all the then Unit Owners of the elements as tenants in common, in the same proportions as such Unit Owners shall then own said common elements, subject, however, to the rights of any mortgagee or other person having a bona fide lien of record against any Unit, unless such lienholder shall consent in writing to the transfer of its lien to the appropriate Unit Owner's undivided interest in the whole property resulting from the recording of such instrument. In the event any condominium statute applicable to this project shall provide a different procedure than the one herein set forth, then the provisions of that act shall be observed as if incorporated herein.

### **Article X General Provisions**

10.01. *Books and Records.* The Association shall keep correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Elements and other common receipts and expenses, together with records showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Unit Owners, minutes of the proceedings of the Unit Owners and the Board of Managers, and records of the names and addresses of the Unit Owners, their respective percentages of interest in the Common Elements, and their mortgagees.



10.02. *Ratification.* All present or future Unit Owners or tenants or their employees shall be subject to the terms of the Declaration, the Bylaws, the Condominium Act, and such rules and regulations as the Board may reasonably adopt for the use of the Common Elements. The mere acquisition or rental of any of the Units located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of said Units, will constitute acceptance and ratification of the Declaration, these Bylaws, and said rules and regulations.

10.03. *Service of Notices on Devisees, Heirs at Law and Personal Representatives.* Notices required to be given to any devisees, heirs at law or personal representatives of a deceased or incompetent Unit Owner may be delivered either personally, by mail, or by facsimile, to such person at its address appearing on the records of the court wherein the estate of such deceased Unit Owner is being administered, or to the last address which has been provided to the Association by said devisees, heirs at law or personal representatives.

10.04. *Enforceability of Covenants.* The invalidity of any covenant, restriction, condition, Limitation, or any other provision of these Bylaws, or any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of these Bylaws.

10.05. *Conflict Between Declaration and Bylaws.* In the event of a conflict between any provision of the Declaration and a provision of these Bylaws, it is hereby agreed that the provisions of the Declaration shall prevail and apply.

10.06. *Construction of Provisions.* The provisions of these Bylaws shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Condominium Property as a highly desirable residence.

10.07. *Amendment of Bylaws.* These Bylaws may be amended or modified at any time, by action or approval of the Unit Owners to which appertain seventy-five percent (75%) or more of the voting power, except the Bylaws affecting the rights or interests of the Declarant or its agent shall not be amended or modified without the prior written consent of the Declarant; provided, further, amendments may be made to these Bylaws by the Declarant for the reasons as provided herein or to correct scrivener's errors or other inadvertent errors as set forth herein or in the Declaration, or for any reasons set forth in the Declaration. Any amendments to these Bylaws shall be in writing and shall be effective from the time a certificate setting forth such modification or amendments is delivered for recording to the County Clerk of San Juan County.

**SIGNATURES & ACKNOWLEDGMENTS**

IN TESTIMONY WHEREOF, the undersigned, officers of the Association, and Declarant have caused these Bylaws to be duly adopted on or as of the \_\_\_\_\_ day of \_\_\_\_\_ 2008.

The "Association"  
ASSOCIATION OF THE SHOPS AT MABE,  
A CONDOMINIUM

"Declarant"  
MABE RESOURCES, LLC

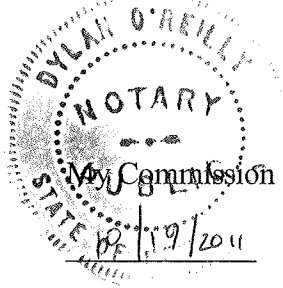
By: Elisabeth Bayless McCord  
Elisabeth Bayless McCord,  
as its President

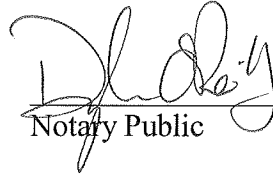
By: Elisabeth Bayless McCord  
Elisabeth Bayless McCord,  
as its Managing Member



STATE OF NEW MEXICO )  
 ) SS:  
COUNTY OF SAN JUAN )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June, 2008 by Elisabeth Bayless McCord, managing member of MaBe Resources, LLC, a New Mexico limited liability company, on behalf of the company as Declarant of The Shops at MaBe, a Condominium.



  
\_\_\_\_\_  
Notary Public



**200809459 06/19/2008 08:51 AM**  
**40 of 41 B1477 P464 R \$89.50**  
San Juan County, NM FRAN HANHARDT

**EXHIBIT D  
OWNERSHIP OF CONDOMINIUM ELEMENTS**

<u>Unit</u>	<u>Square Footage</u>	<u>% of total Square Feet % Ownership in Common Elements, &amp; % of voting rights</u>
A	3501	26.42%
B	4345	32.79
C	<u>5407</u>	<u>40.80</u>
TOTAL	13,253	100.00%



**200809459 06/19/2008 08:51 AM**  
**41 of 41 B1477 P464 R \$89.50**  
San Juan County, NM FRAN HANHARDT