

12/23/04

SANDOVAL COUNTY  
200441052  
Book- 407 Page- 41052  
87 of 121  
12/23/2004 08:43:18 AM

**EXHIBIT "D"**

**BY-LAWS**

**OF**



**M A R I P O S A**

**COMMUNITY ASSOCIATION, INC.**

**TABLE OF CONTENTS**

	<b>PAGE</b>
Chapter 1 Name, Principal Office, and Definitions .....	1
1.1. Name .....	1
1.2. Principal Office .....	1
1.3. Definitions .....	1
Chapter 2 Membership: Meetings, Quorum, Voting, Proxies .....	2
2.1. Membership .....	2
2.2. Place of Meetings .....	2
2.3. Association Meetings .....	2
2.4. Notice of Meetings .....	3
2.5. Waiver of Notice .....	3
2.6. Adjournment of Meetings .....	3
2.7. Voting .....	3
2.8. Proxies .....	5
2.9. Quorum .....	5
2.10. Conduct of Meetings .....	6
2.11. Action Without a Meeting .....	6
Chapter 3 Board of Directors: Selection, Meetings, Powers .....	7
A. Composition and Selection .....	7
3.1. Governing Body; Qualifications .....	7
3.2. Number of Directors .....	7
3.3. Selection of Directors; Term of Office .....	7
3.4. Nomination and Election Procedures .....	8
3.5. Removal of Directors and Vacancies .....	9
B. Meetings .....	10
3.6. Organizational Meetings .....	10
3.7. Regular Meetings .....	10
3.8. Special Meetings .....	10
3.9. Notice; Waiver of Notice .....	10
3.10. Telephonic Participation in Meetings .....	10
3.11. Quorum of Board .....	11
3.12. Conduct of Meetings .....	11
3.13. Open Meetings; Executive Session .....	11
3.14. Action Without a Formal Meeting .....	11
C. Powers and Duties .....	11
3.15. Powers .....	11
3.16. Duties .....	12
Chapter 4 Officers .....	13

4.1.	Officers	13
4.2.	Election and Term of Office	13
4.3.	Removal and Vacancies	13
4.4.	Powers and Duties	13
4.5.	Resignation	13
Chapter 5 Committees		14
5.1.	General	14
5.2.	Nominating Committee	14
5.3.	Service Area Committees	14
5.4.	Covenants Committee	14
Chapter 6 Standards of Conduct; Liability and Indemnification		15
6.1.	Standards for Directors and Officers	15
6.2.	Liability	15
6.3.	Indemnification	16
6.4.	Conflicts of Interest; Code of Ethics	16
6.5.	Advancement of Expenses	17
6.6.	Board and Officer Training	17
Chapter 7 Management and Accounting		18
7.1.	Compensation of Directors and Officers	18
7.2.	Right of Founder to Disapprove Actions	18
7.3.	Managing Agent	19
7.4.	Accounts and Reports	19
7.5.	Borrowing	20
7.6.	Right to Contract	20
7.7.	Agreements, Contracts, Deeds, Leases, Checks, Etc.	20
Chapter 8 Enforcement Procedures		21
8.1.	Notice and Response	21
8.2.	Hearing	21
8.3.	Appeal	22
Chapter 9 Miscellaneous		23
9.1.	Fiscal Year	23
9.2.	Parliamentary Rules	23
9.3.	Conflicts	23
9.4.	Books and Records	23
9.5.	Notices	24
9.6.	Amendment	24
GLOSSARY		27



**M A R I P O S A**

SANDOVAL COUNTY  
200441052  
Book- 407 Page- 41052  
89 of 121  
12/23/2004 08:43:18 AM

## BY-LAWS

### OF

## MARIPOSA COMMUNITY ASSOCIATION, INC.

### Chapter 1

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#### Name, Principal Office, and Definitions

*Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people. Henry Clay*

##### 1.1. Name

The name of the corporation is Mariposa Community Association, Inc. (the "Association").

**M A R I P O S A**

##### 1.2. Principal Office

The Association's principal office shall be located in Sandoval County, New Mexico. The Association may have such other offices as the Board may determine or as the Association's affairs require.

##### 1.3. Definitions

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Charter for Mariposa, as it may be amended (the "Charter"). The term "majority," as used in these By-Laws, means those votes, Owners, or other group, as the

context may indicate, totaling more than 50% of the total eligible numbers

## Chapter 2

### Membership: Meetings, Quorum, Voting, Proxies

*We do not seek to have our way, but to find a common way. Lyndon B. Johnson*

#### 2.1. Membership

The Association shall have two classes of membership, Owner Membership, which is comprised of all Owners, and Founder Membership, which consists solely of the Founder.

(a) **Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in the Charter and in these By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in a writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any recreational facilities available for use by members.

(b) **Founder Membership.** The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such

earlier date as the Founder determines and declares in a recorded instrument.

#### 2.2. Place of Meetings

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.


#### 2.3. Association Meetings

(a) **General.** Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or New Mexico law otherwise requires; provided, until Voting Delegates are selected, meetings shall be of the Members and references in these By-Laws to Voting Delegates shall be deemed to be references to the Members. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings. In

addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a petition which Voting Delegates representing at least 10% of the total votes in the Association sign.

 Once Voting Delegates are elected to represent Neighborhoods, the Voting Delegates represent the Owners' interests at Association meetings. Due to the size of Mariposa, this will assist in making Association meetings efficient.

#### 2.4. Notice of Meetings

The President, the Secretary, or the officers or other persons calling a meeting of the Voting Delegates shall deliver or cause to be delivered to each Voting Delegate entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 14 but not more than 50 days before the date of such meeting.

#### 2.5. Waiver of Notice

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate's attendance at a meeting shall be deemed a waiver by such Voting Delegate of notice of the time, date, and place thereof,

unless the Voting Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### 2.6. Adjournment of Meetings

If any Association meeting cannot be held because a quorum is not present, the Voting Delegates representing a majority of the votes present at such meeting may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Voting Delegates of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Voting Delegates to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

#### 2.7. Voting

(a) **Voting Rights.** Members shall have such voting rights as are set

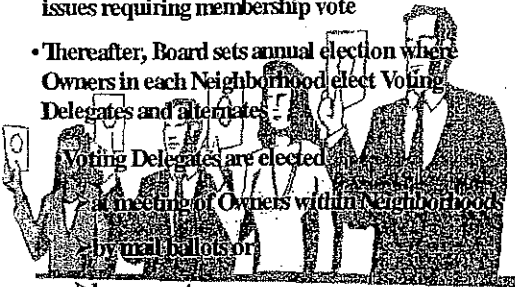
forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents.

for an election of Voting Delegates and alternates on a biennial basis.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owners within each Neighborhood, as the Board determines. Upon written petition signed by Owners holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any Person may submit his or her name for consideration.

**VOTING DELEGATES**

- Until Voting Delegates exist, Owners vote on issues requiring membership vote
- Thereafter, Board sets annual election where Owners in each Neighborhood elect Voting Delegates and alternates



Voting Delegates are elected  
at a meeting of Owners within Neighborhoods  
by mail ballots or  
> by computer

- Voting Delegates and alternates serve one-year terms

The presence, in person or by proxy, or the filing of ballots by Owners representing at least 25% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

**MARRIAGE PROPOSAL**  
**(b) Election and Removal of Voting Delegates.** The Owners owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

Subject to the above quorum requirement, in any election of Voting Delegates the candidate who receives the greatest number of votes shall be elected as Voting Delegate and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate.

The first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood shall occur no later than 90 days prior to any Association meeting at which the Voting Delegate from such Neighborhood will be entitled to vote. Thereafter, the Board shall call

ing Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of two years or until their successors are elected, whichever is longer. Elections for the Neighborhoods shall alternate to avoid all Neighborhoods holding elections at the same time.

In the event of the death, disability, or resignation of a Voting Delegate, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owners entitled to elect such Voting Delegate may elect a successor for the remainder of the term.

Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owners representing a majority of the total number of Units in the Neighborhood the Voting Delegate represents.

## 2.8. Proxies

**M A R I**  
Voting Delegates may not vote by proxy but only in person or through their designated alternates; provided, any Voting Delegate who is entitled to cast only the vote(s) for his own Unit(s) pursuant to the Charter may cast such vote(s) in person or by proxy until such time as the Board first calls for election of a Voting Delegate to represent the Neighborhood of which the Unit is a part. Likewise, if a Member is entitled personally to cast the vote for his Unit on any matter, he or she may vote in person or by proxy, subject to the limitations of New Mexico law and subject to any specific provision to the contrary in the Charter or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, signed by the Member or his duly au-

thorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

**P O S A**  
A proxy is a legal term for the concept of one person giving a second person written authorization to act for them in an official capacity, such as voting.

## 2.9. Quorum

Except as these By-Laws or the Charter otherwise provides, the presence of Voting Delegates representing a majority of the total votes in the Association shall constitute a quorum at all Association meetings.

SANDOVAL COUNTY

200441052

Book- 407 Page- 41052

94 of 121

12/23/2004 08:43:18 AM



A "quorum" is a legal term for the minimum number of persons necessary to accomplish a valid vote.

SANDOVAL COUNTY  
 200441052  
 Book- 407 Page- 41052  
 95 of 121  
 12/23/2004 08:43:18 AM

**2.10. Conduct of Meetings**

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

**2.11. Action Without a Meeting**

Any action required or permitted by law to be taken at a meeting of the Voting Delegates may be taken without a meeting, without prior notice, and without a vote if Voting Delegates entitled to vote on such matter sign a written consent specifically authorizing the proposed action. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Voting Delegates at a meeting.



P O S A

## Chapter 3

### **Board of Directors: Selection, Meetings, Powers**

#### **A. Composition and Selection.**

##### **3.1. Governing Body; Qualifications**

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Mariposa.

If an Owner is not an individual, any officer, director, partner, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time except in the case of directors the Founder appoints.

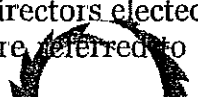
##### **3.2. Number of Directors**

The Board shall consist of three to seven directors, as provided in Section 3.3.

##### **3.3. Selection of Directors; Term of Office**

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Articles of Incorpora-

tion, who shall serve until their successors are appointed or elected as provided in this Section.

(b) **Directors During Founder Control Period.** Except as otherwise provided in this subsection, the Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Voting Delegates shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Voting Delegates are referred to as "Owner Directors."): 

(i) Within 30 days after the time that Owners other than Builders own 25% of the Units permitted by the Master Plan or whenever the Founder earlier determines, the President shall call for an election by which the Voting Delegates shall be entitled to elect one of the three directors, who shall be elected at large. The remaining directors shall be appointees of the Founder. The Owner Director shall be elected for a term of two years or until the happening of the event described in Section 3.3(b)(ii), whichever is shorter. If such director's term expires prior to the happening of the event described in Section 3.3(b)(ii), a successor shall be elected for a like term.

(ii) Within 30 days after the time that Owners other than Builders own 50% of the Units permitted by the Master Plan or whenever the Founder earlier determines, the Board shall be

increased to five directors and the President shall call for an election by which the Voting Delegates shall be entitled to elect two of the five directors, who shall be elected at large. The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in Section 3.3(c)(i), whichever is shorter. If such directors' terms expire prior to the happening of the event described in Section 3.3(c)(i) below, successors shall be elected for a like term.

**(c) Directors After the Founder Control Period.**

(i) Within 90 days after termination of the Founder Control Period, the President shall call for an election by which the Voting Delegates shall be entitled to elect three of the five directors, who shall be elected at large. The Founder shall appoint the remaining two directors. The Owner Directors shall serve until the first annual meeting following the termination of the Founder Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Founder Control Period, this subsection shall not apply and directors shall be elected in accordance

with Section 3.3(c)(ii) below.

(ii) Not later than the first annual meeting after the termination of the Founder Control Period, the Board shall be increased to seven directors. The President shall call for an election by which the Voting Delegates shall be entitled to elect six directors, with an equal number of Owner Directors elected by the Voting Delegates representing each Election District and any remaining Owner Director slots filled at large by the vote of all Voting Delegates. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

(iii) So long as there is a Founder, the Founder shall be entitled to appoint, remove and replace the seventh director. Thereafter, the director elected by the Founder shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Voting Delegates shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years.

(iv) Upon expiration of the term of office of each Owner Director,

TRANSITION OF CONTROL OF BOARD OF DIRECTORS					
Initial Board	25% of Permitted Units Conveyed	50% of Permitted Units Conveyed	90 days after Termination of Founder Control Period	1st Annual Meeting after Termination of Founder Control Period	Termination of Founder Membership
Founder	Owner	Owner	Owner	Owner	Owner
Founder	Founder	Owner	Owner	Owner	Owner
Founder	Founder	Founder	Owner	Owner	Owner
SANDOVAL COUNTY 200441052		Founder	Founder	Owner	Owner
		Founder	Founder	Owner	Owner
Book- 407 Page- 41052 97 of 121				Owner	Owner
12/22/2004 08:43:18 AM				Founder	Owner

the Voting Delegates entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board during and after the Founder Control Period.

(d) *Election Districts.*

The Voting Delegates representing the Neighborhoods within each Election District shall vote on a separate slate of candidates for election to the Board. Each Election District is entitled to elect the number of directors specified in Chapter 3 of the By-Laws.

Acting alone, the Founder shall establish Election Districts, if at all, not later than the date the Founder Control Period expires by filing with the Association and recording a Supplemental Charter identifying each Election District by legal description or other means such that the Units within each Election District can be determined easily.

After the Founder's right to create Election Districts expires, the Board, with the approval of Voting Delegates representing a majority of the Neighborhoods and a majority of the total votes in the Association, may create one or more Election Districts, or change existing Election Districts, by recording a Supplemental Charter or amending a previous Supplemental Charter.

Recording or amending a Supplemental Charter to create or change Election Districts shall not be an amendment to the Charter or the By-Laws, and no

consent or approval of any person shall be required except as stated in this Section. Until Election Districts are established, the Community shall be a single Election District. After Election Districts are established, all portions of the Community not assigned to a specific Election District shall constitute a single Election District.

**3.4. Nomination and Election Procedures**

(a) *Nomination of Candidates.*

Sixty days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman and three or more Owners or representatives of Owners. Members of the Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Voting Delegates, and for the director(s) to be elected by the Voting Delegates within each Election District. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Nominations shall also be permitted from the floor at the meeting at which any election is held. In addition or in the alternative, any Per-

son may submit his or her name for consideration. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) **Election Procedures.** At each election, voting shall be by written ballot. Each Voting Delegate may cast all votes assigned to the Units it represents for each position to be filled from any slate of candidates on which such Voting Delegate is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected.

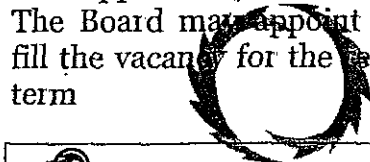
In the event of a tie vote on any slate, the Voting Delegates entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) from such slate by the Owners represented by such Voting Delegates. Such election shall be held by mail, with ballots to be sent by first class mail to each Owners entitled to vote on such slate within 10 days after the meeting at which the original election was held.

### 3.5. Removal of Directors and Vacancies

Any Owner Director may be removed, with or without cause, by the vote of Voting Delegates holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a di-

rector by the Voting Delegates, the Voting Delegates entitled to elect the removed director shall elect a successor for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who (a) has three consecutive unexcused absences from Board meetings; (b) is more than 30 days delinquent (or resides in a Unit owned by a Member who is so delinquent) in the payment of any assessment or other charge due the Association; or (c) fails to cure a violation of the Governing Documents pertaining to his or her Unit after being given notice from the Board or its designees and a reasonable opportunity to cure such violation. The Board may appoint a successor to fill the vacancy for the remainder of the term

  
Owner Directors who have three consecutive unexcused absences from Board meetings or owe money to the Association for more than 30 days can be removed from the Board. This provision helps to ensure that the Directors fulfill their duties to the Association.

In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates entitled to fill such directorship shall elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among eligible Owners or residents of Units within the Election District represented by the director who vacated the position.

This Section shall not apply to directors the Founder appoints. The Founder shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

## **B. Meetings**

### **3.6. Organizational Meetings**

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix for the purpose of electing officers and providing such other organizational functions as deemed appropriate.

### **3.7. Regular Meetings**

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings**

The Board shall hold special meetings when called by written notice which the President, Vice President, or any two directors sign(s).

### **3.9. Notice; Waiver of Notice**

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate

such notice promptly to the director; or (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least 72 hours before the time set for the meeting.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.10. Telephonic Participation in Meetings**

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

SANDOVAL COUNTY  
200441052

Book- 407 Page- 41052  
100 of 121

12/23/2004 08:43:18 AM

### 3.11. Quorum of Board

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision unless New Mexico law, these By-Laws, or the Charter specifically provides otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

### 3.12. Conduct of Meetings


The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

### 3.13. Open Meetings; Executive Session

(a) Subject to the provisions of Section 3.13(b) and Section 3.14, all Board meetings shall be open to all Voting Delegates, but only directors may participate in any discussion or deliberation unless a director requests that attendees

be granted permission to speak. In any case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

 Board meetings must be open to all Association members except when sensitive topics that could affect the Association's rights are being discussed.

### 3.14. Action Without a Formal Meeting

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

### C. Powers and Duties

#### 3.15. Powers

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or New Mexico law require to be done and exercised exclusively by the Voting Delegates or the membership generally.

The Board's powers include such things as obtaining water usage informa-

tion from local and state authorities to the extent permitted by such authorities and providing or providing for information and training classes designed to educate Voting Delegates and Owners of the nomination, election, and voting process.

### 3.16. Duties

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(b) cooperating with the Assembly in levying and collecting assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community Wide Standard and in accordance with the Community Covenant;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Charter;

(g) opening bank accounts on the Association's behalf and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping a detailed accounting of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;

(n) permitting Utility Suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying a director, officer, or committee member or former director, officer, or committee member of the Association to the extent such indemnity is required by New Mexico law, the Articles, and these By-Laws.

(p) assisting in the resolution of disputes between owners and others in an attempt to discourage litigation, as set forth in the Charter;

(q) cooperating with the Assembly in carrying out its purposes and responsibilities under the Community Covenant and the Assembly's by-laws;

(r) cooperating with the Assembly in upholding the Community-Wide Standard;

(s) cooperating with the Foundation in carrying out its purposes and responsibilities, including any environmental and conservation activities;

(t) cooperating with non-residential owners and the Commercial Association, if any, in upholding the Community-Wide Standard;

(u) carrying out responsibilities pursuant to any covenants to share costs that the association enters into;

(v) filing required documents or reports with the New Mexico State Corporations Commission and other entities; and

(w) performing any other duties that are required under New Mexico law for nonprofit corporations.



P O S A

## Chapter 4

### **Officers**

*You cannot be a leader, and ask other people to follow you, unless you know how to follow, too.*  
*Sam Rayburn*

#### **4.1. Officers**

The Association's Officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book kept for such purpose. Any two or more offices may be held by the same person, except the offices of President and Secretary. The Board shall also appoint one or more representatives to serve on the Assembly's Board of Directors as provided in the Assembly's By-Laws.

#### **4.2. Election and Term of Office**

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Voting Delegates, to serve until their successors are elected.

#### **4.3. Removal and Vacancies**

The Board may remove any officer whenever in its judgment the Associa-

tion's best interests will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### **4.4. Powers and Duties**

The Association's officers shall have such powers and duties as generally pertain to their respective offices as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### **4.5. Resignation**

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

**Chapter 5**

**Committees**

**5.1. General**

The Board may appoint such committees, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

**5.2. Nominating Committee**

The Board shall appoint a Nominating Committee prior to any election of directors further described in Section 3.4.

**5.3. Service Area Committees**

In addition to any other committees appointed as provided above, each Service Area which has no formal organizational structure may elect a Service Area Committee to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those provided to all Members of the Association in accordance with the Charter. A Service Area Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Such Service Area Committees, if elected, shall consist of three Members; provided, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any

director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9 and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

**5.4. Covenants Committee**

In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8 of these By-Laws.

## Chapter 6

### Standards of Conduct; Liability and Indemnification

*Hold yourself responsible for a higher standard than anybody expects of you. Never excuse yourself. Henry Ward Beecher*

#### 6.1. Standards for Directors and Officers

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under New Mexico law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under New Mexico law.

#### 6.2. Liability

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Sec-

tion 6.1 and has acted in compliance with Section 53-8-25.1 of the New Mexico Nonprofit Corporation Act as it may be amended.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*.

(ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not

be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, recklessness, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

### 6.3. Indemnification

Subject to the limitations of New Mexico law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under New Mexico law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:


(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

 Indemnification is the practice in which corporations pay the expenses of officers or directors who are named as defendants in litigation where the litigation is related to the corporation's affairs.

### 6.4. Conflicts of Interest; Code of Ethics


*We are what we repeatedly do.  
Excellence, therefore, is not an act  
but a habit. Aristotle*

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds

for removal by a majority vote of the other Board members.

Notwithstanding the above, directors appointed by the Founder may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors and officers. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in a manner consistent with the Board Standards described in Section 6.1. Each officer and director, as a precondition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.

 Generally, a conflict of interest refers to a clash between the Association's interest and a director's or officer's personal interest which could cause the Association's interest to be disregarded in favor of a director's interest.

### 6.5. Advancement of Expenses

In accordance with the procedures and subject to the conditions and limitations set forth in New Mexico law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

### 6.6. Board and Officer Training

The Board shall conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable New Mexico corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audio-tape, or in other format.

In a similar manner, the Board may provide or provide for Owner and resident education and training opportunities designed to foster awareness of Mariposa's governance, operations, and concerns. The Board shall conduct or provide for training and information classes designed to educate Voting Delegates and Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers.

SANDOVAL COUNTY  
200441052

Book- 407, Page: 41052  
108 of 121  
12/23/2004 08:43:18 AM

## **Chapter 7**

### **Management and Accounting**

#### **7.1. Compensation of Directors and Officers**

The Association shall not compensate Directors and officers for acting as such unless Voting Delegates representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

#### **7.2. Right of Founder to Disapprove Actions**

So long as there is a Founder, the Founder shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Founder's sole judgment, would tend to impair rights of the Founder or Builders under the Charter or these By-Laws, interfere with development or construction of any portion of

Mariposa, or diminish the level of services the Association provides.

(a) **Notice.** The Association shall give the Founder written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Founder the opportunity to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program that would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Founder, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Founder, acting through any officer or director, agent, or

authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 7.3. Managing Agent

The Board may employ for the Association professional management agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Founder or any Founder Affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Founder Control Period unless such

contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Founder Control Period upon not more than 90 days' written notice.

The managing agent shall not accept remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. The managing agent shall promptly disclose to the Board any financial or other interest which it may have in any firm providing goods or services to the Association.

### 7.4. Accounts and Reports

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

(i) accounting and controls should conform to generally accepted accounting principles; and

(ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

SANDOVAL COUNTY  
200441052

Book- 407 Page- 41052.  
110 of 121  
12/23/2004 08:43:18 AM

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

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In addition, the Association's annual report shall be delivered to the New Mexico State Corporation Commission in accordance with New Mexico law.

### **7.5. Borrowing**

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

### **7.6. Right to Contract**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhood and other owners or residents associations, within and outside Mariposa. The Board shall consent to any common management agreement.

### **7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.**

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

**P O S A**

SANDOVAL COUNTY  
200441052

Book- 407 Page- 41052  
111 of 121

12/23/2004 08:43:18 AM

## **Chapter 8**

### **Enforcement Procedures**

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

#### **8.1. Notice and Response**

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, and (c) that the alleged violator has 14 days from the date of such notice to respond to the notice of the alleged violation in writing or cure the alleged violation.

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The alleged violator shall respond to the notice of the alleged violation in writing within such 14-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 14-day period, the Board may, but shall not be obligated to, waive the sanction. Such waivers shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

If the alleged violator does not respond to the notice of the alleged violation in writing or cure the alleged violation within 14 days of the date of the written notification, the Board or its

delegate shall serve the alleged violator with a second written notice sent via certified mail describing (a) the nature and the date of the alleged violation, (b) the proposed sanction to be imposed, and (c) that the alleged violator shall have 14 days to present a written request for a hearing.

If the alleged violator (a) does not cure the violation, (b) present a written plan to correct the alleged violation, or (c) present a written request for a hearing within 14 days of the second notification, the Board or its delegate shall serve the alleged violator with a third written notice sent via certified mail describing (a) the nature and date of the violation, and (b) the commencement date of the sanction.

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Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

#### **8.2. Hearing**

If a hearing is requested within the allotted ten-day period, the hearing shall be held before the Covenants Committee, if appointed, or the Board, if a

Covenants Committee has not been appointed. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Covenants Committee shall contain a written statement of the results of the hearing (i.e., the Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

### 8.3. Appeal

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing date. If a Covenants Committee has not been appointed and a hearing is held before the Board, the violator shall not have a right to appeal the decision to the Board.



P O S A

## Chapter 9

### Miscellaneous

#### 9.1. Fiscal Year

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

#### 9.2. Parliamentary Rules

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with New Mexico law or the Governing Documents.

#### 9.3. Conflicts

If there are conflicts among the provisions of New Mexico law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of New Mexico law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Diagrams, tables, and text set apart in boxes, some with "key" icons, are used in the Governing Documents to illustrate concepts and assist the reader. If there is a conflict between any of these and the text of the Governing Documents, the text shall control. In addition, the quotations set apart in boxes are for information only and have no legal effect.

#### 9.4. Books and Records

(a) *Inspection by Members and Mortgagees.* The Board shall

make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within Mariposa as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

## 9.5. Notices

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided in the Charter or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member or Voting Delegate, at the address, telephone facsimile number, or e-mail address which the Member or Voting Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Voting Delegate;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the records of the New Mexico State Corporation Commission or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this Section.

(c) **Effective Date.** Notice sent in accordance with Sections 9.5(a) and

9.5(b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage pre-paid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

## 9.6. Amendment

(a) **By Founder.** Prior to termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws. Thereafter, the Founder may unilaterally amend these By-Laws at any time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units. So long as there is a Founder, the Founder may unilaterally amend these By-Laws for any other purpose, provided the amendment has no

material adverse effect upon any Member's substantive right.

SANDOVAL COUNTY

200441052

Book- 407 Page- 41052

116 of 121

12/23/2004 08:43:18 AM

**(b) By Members Generally.**

Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing 67% of the total votes in the Association, and the consent of the Founder, if such exists. In addition, the approval requirements set forth in the Charter shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**(c) Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon adoption and execution by two officers, and shall be recorded. Any procedural challenge to an amendment must be made within six months of its adoption, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Founder or the Founder without the written consent of Founder or the assignee of such right or privilege.



P O S A

IN WITNESS WHEREOF, the undersigned, in their capacity as officers of the Association, on behalf of the Association, have executed these By-Laws, and as of the 27<sup>th</sup> day of August, 2004.

SANDOVAL COUNTY  
200441052  
Book- 407 Page- 41052  
117 of 121  
12/23/2004 08:43:18 AM

[Signature] By: President

[Signature] Attest:

[Signature] By: Secretary

[Signature] Attest:

State of New Mexico

County of BERNALILLO

This instrument was acknowledged before me on August 27, 2004 by Thomas Franchini, [Secretary] and JACK EICHORN [President] of Mariposa Community Association, Inc.

M [SEAL] A R I P [Signature] A  
Notary Public

My Commission Expires:  
May 13, 2007

## GLOSSARY

The capitalized terms used in these By-Laws are defined in the Charter and incorporated herein by reference. All other terms used in these By-Laws have their natural, commonly accepted definitions.

**Approval:** permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required

**Area of Common Responsibility:** all of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility

**Assembly:** the Mariposa Assembly, Inc., organized as a means of generating, enhancing, and pursuing a genuine sense of community within Mariposa

**Association:** the Mariposa Community Association, Inc.

**Board:** the Association's board of directors

**Builders:** those Persons who purchase one or more unimproved lots or parcels of land within Mariposa for further subdivision or development and resale in the ordinary course of their business

**Charter:** Community Charter for Mariposa Residential Property, recorded or to be recorded in the office of the Clerk of the County Court of Sandoval County, New Mexico

**Common Area:** any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit

**Common Expenses:** except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners

**Community:** consists of the property described in Exhibit "A" to the Charter and any additional property made subject to this Charter in the future by amendment or supplement

**Community Covenant:** the recorded Covenant for Community for Mariposa, which describes and governs the Assembly's rights and responsibilities

**Community Foundation:** the Mariposa Community Foundation, Inc. organized under the New Mexico Nonprofit Corporation Act and Section 501(C)(3) of the Internal Revenue Code exclusively for charitable, educational, environmental, and scientific purposes

**Community-Wide Standard:** (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (b) the minimum standards described in this Charter, the Community Covenant, the Guidelines for Sustainability, the Rules, and Board resolutions

**Consent:** permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required

**Discretion:** the sole and absolute power or right to decide or act

**Election Districts:** the Units within one or more Neighborhoods, for the purpose of electing directors to the Board

**Founder:** High Desert Investment Corporation, its successors and assigns

**Founder Affiliate:** any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder

**Founder Control Period:** the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors

**Founder Membership:** the Founder holds the sole Founder membership

**Governing Documents:** various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property comprising the Community, including the Charter, any Supplement, the Articles of Incorporation, these By-Laws, the Guidelines for Sustainability, the Rules, and Board resolutions.

**Improvements:** all site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit

**Lease and Leasing:** the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit

**Maintenance:** maintenance, repair, rehabilitation, and renewal

**Master Plan:** the Founder's proposed plan for development of the Community, as it may be supplemented and amended, which encompasses all of the property described in Exhibit "A" to the Charter and all or a portion of the property described in Exhibit "B" to the Charter

**Mortgage:** a mortgage or other form of security instrument affecting title to a Unit

**Mortgagee:** the holder or beneficiary of that Mortgage

**Neighborhood Association:** portions of the Community may be developed under a condominium form of ownership or may have special requirements that lead a Builder to establish a separate condominium or homeowners association to administer additional covenants applicable to that particular area

**Neighborhoods:** a Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Units are grouped into Neighborhoods to facilitate a system of representative voting on matters as to which the *Governing Documents* require approval of the Association's membership

**Owner:** each Person that holds record title to a Unit

**Owner Membership:** every Owner is automatically a member of the Association; however, there shall be only one membership per Unit

**Person:** an individual, a corporation, a partnership, a limited liability company, or any other legal entity

**Recorded:** an instrument filed or the filing of a legal instrument in the official records of Sandoval County, or such other place designated as the official location for filing documents affecting title to real estate in Sandoval County in order to make them a matter of public record

**Rules:** the rules of the Association which regulate use of property, activities, and conduct within Mariposa

**Service Area Expenses:** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area

**Service Areas:** Units may also be part of one or more Service Areas in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community

**Units:** a Unit is a portion of Mariposa, depicted in a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as a residence for a single family

**Utility Suppliers:** providers of utilities for Mariposa, including a private network

**Voting Delegate:** the Owners of Units in each Neighborhood elect a Voting Delegate and an alternative Voting Delegate, in the manner provided in these By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners

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121 of 121

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