

**AMENDED AND RESTATED  
BYLAWS OF  
KACHINA HILLS  
OWNERS ASSOCIATION, INC.**

**ARTICLE I - Name and Address**

The name of this non-profit corporation is KACHINA HILLS OWNERS ASSOCIATION, INC. (the "Association"). The principal office of the Association initially shall be located at 721 West Manhattan Street, Santa Fe, New Mexico 87501, but meetings of members and directors may be held at such places in the City of Santa Fe, New Mexico as may be designated by the Board of Directors.

**ARTICLE II - Corporate Seal**

The Association may obtain a corporate seal as designated by the Board of Directors.

**ARTICLE III - Definitions**

The terms defined in Article 1 of the Declaration of Covenants, Conditions and Restrictions for Kachina Hills Subdivision (the "Declaration"), as recorded in Book 1063, pages 106 to 134 of the real property records of Santa Fe County, New Mexico, as the same may be amended from time to time, shall have the same meanings when used in these Bylaws. If there shall be any conflict or variance between these Bylaws and the Declaration, the Declaration shall control.

**ARTICLE IV - Meetings of Members**

**Section 1. Annual Meetings.** The first annual meeting of members shall be held within one year after the date of incorporation of the Association. Each subsequent annual meeting of the members shall be held each year thereafter, on a day and at a time determined by the Board of Directors.

**Section 2. Special Meetings.** Special meetings of members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to cast one-fourth ( $\frac{1}{4}$ ) of all of the votes.

**Section 3. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. No proxy shall be effective for more than one year from date of signature by the member.

**Section 4. Voting.** With respect to each matter submitted to the membership, there shall be one vote allocated to each Lot. The Owner of each Lot shall be entitled to exercise the vote allocated to his or her Lot. In the event of multiple ownership of a Lot, the vote of such Lot shall be cast by the person designated in a certificate executed by all the Owners of such Lot and filed



with the Secretary. If no such certificate has been filed or the person designated is absent from the meeting, and only one of the multiple Owners of such Lot is present, he or she shall be entitled to cast the vote allocated to that Lot. If no such certificate has been filed or the person designated is absent from the meeting, and more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with an agreement of a majority of such multiple Owners then present. In the absence of such a majority, the votes allocated to that Lot shall not be cast.

**Section 5. Quorum.** The presence at any meeting of members, or of proxies, entitled to cast thirty percent (30%) of the votes shall constitute a quorum for any action, except as otherwise expressly provided in the Articles of Incorporation, the Declaration or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. When a quorum is present or represented at any meeting, a majority vote of the members present or represented thereat will be required to decide any question brought before such meeting, unless the question is one upon which express provision of law, or of the Articles, Bylaws, or Declaration, a larger or different vote is required, in which case such express provision shall govern and control the decision of such question.

#### **ARTICLE V - Notice**

**Section 1. General.** Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by personally delivering or mailing a copy of such notice, postage prepaid, not less than fifteen (15) nor more than sixty (60) days before the date for such meeting, to each member entitled to vote, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. No business shall be transacted at any special meeting except as stated in such notice.

**Section 2. Amendments.** Written notice of a meeting wherein changes in the Governing Documents and/or Declaration are to be considered by the members shall be given as set forth in Article V, Section 1., above, provided that such notice shall be given at least thirty (30) days before such meeting and shall specify the change in the Governing Documents and/or Declaration to be considered at said meeting.

#### **ARTICLE VI - Board of Directors**

**Section 1. Number.** The Board shall consist initially of three (3) members. No later than sixty (60) days after fifty percent (50%) of the Lots are conveyed to Owners other than the Declarant, the number of Directors shall be increased to five (5).

**Section 2. Composition.** At the first and each subsequent annual meeting of the Association, until such time as fifty percent (50%) of the Lots are conveyed to Owners other than the Declarant, Directors shall be appointed by Declarant, and need not be Owners. The two (2) additional Directors resulting from the increase in the number of Directors from three (3) to five (5) shall be appointed by the Declarant, but shall be Owners who are not affiliates of the Declarant. Members appointed by the Declarant may be removed from the Board at any time by



the Declarant, with or without cause. The Declarant, at its option, may surrender all or a portion of its right to appoint and remove members of the Board. If the Declarant shall surrender such right or any portion thereof, Declarant shall be entitled to require, for the duration of the period of Declarant Control, that specified actions of the Board must be approved by the Declarant before the same become effective. All elected members of the Board shall be Owners and shall be elected at large from the membership of the Association.

**Section 3. Term.** Except as provided below, the initial Board shall serve until the first annual meeting of the Association. Again except as provided below, members of each subsequent Board appointed by the Declarant shall hold office until the next annual meeting of the Association or until their successors have been elected or appointed. Notwithstanding the foregoing to the contrary, no later than the earlier of:

(a) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than the Declarant,

(b) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business, or

(c) three (3) years after conveyance of the first Lot, the term of all Directors appointed by the Declarant shall expire, and each such Director shall be replaced by a Director elected by Owners. At the first annual meeting of the Association following the end of the above-described period of Declarant Control, the number of Board members shall be divided into two (2) classes, the first class comprised of two (2) Board members and the second class comprised of three (3) board members. The members of the first class shall have an initial term of one (1) year or until their successors have been elected. The members of the second class shall have an initial term of two (2) years or until their successors have been elected. Thereafter, members of each class shall have terms of two (2) years or until their successors have been elected.

**Section 4. Method of Nomination.** Candidates for election to the Board of Directors must file with the Board or its designee a petition of candidacy signed by at least three (3) Owners at least thirty (30) days before the annual meeting. There shall be no nominations to the Board from the floor at the annual meeting.

**Section 5. Method of Election.** Election to the Board of Directors shall be by secret, written ballot, cast at the meeting in question. At such election, the members or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is expressly prohibited.

**Section 6. Resignation and Removal.** Any appointed Director may be removed from the Board, with or without cause, by the Declarant. Any elected Director may be removed from the Board, with or without cause, by a majority vote of Owners. In the event of death, resignation, or removal of a Director appointed by Declarant, Declarant shall appoint a successor to serve for the unexpired term. In the event of death, resignation, or removal of a Director elected by Owners, the remaining Directors shall elect a successor to serve for the unexpired term.

**Section 7. Duties.** It shall be the duty of the Board of Directors to:



A. Adopt and amend annual budgets of revenues and expenditures, including reserves; establish and collect the assessment of each Owner for any Common Expense; and, establish and maintain the Working Capital Fund;

B. Defend actions or administrative proceedings brought against the Association;

C. Regulate the use, maintenance, repair, replacement, and modification of the Common Areas, Stormwater Ponding Areas, Erosion And Drainage Control Devices, Common Property, Walking/Jogging Trail and Hiking Trail, and in connection therewith, adopt, publish and amend rules and regulations, including those governing the use of the Semi-Public Open Space and the Walking/Jogging Trail and the Hiking Trail, as required under the Declaration;

D. Inspect, maintain and repair the Common Areas, Stormwater Ponding Areas, Erosion And Drainage Control Devices (according to the provisions of Article 3.6 of the Declaration), Common Property, Walking/Jogging Trail and Hiking Trail;

E. Pay taxes, including real estate taxes, on the Common Areas and Common Property;

F. Notify the holder of any mortgage affecting a Lot of any violation of the Declaration, the Governing Documents, rules, or regulations of the Association by an Owner of the Lot subject to the mortgage, if such violation remains unremedied for a period exceeding thirty (30) days, provided the mortgagee has notified the Association that it is the holder of the mortgage affecting the Lot;

G. Enforce the covenants, restrictions, easements, charges, and liens, and all other terms and conditions of, the Declaration;

H. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth ( $\frac{1}{4}$ ) of the members who are entitled to vote;

I. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

J. Suspend the voting rights and right to use of the Common Area of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period to be set by the Board for infraction of published rules and regulations; and,

K. Declare the office of a member of the Board of Directors to be vacant if such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

**Section 8. Powers.** The Board of Directors shall have the power to:



A. Hire, supervise and discharge such agents, employees, and independent contractors as the Board may from time to time determine to be in the best interest of the Association;

B. Make such contracts and incur such liabilities as the Board may from time to time determine to be in the best interest of the Association;

C. Grant such easements, leases, licenses, and concessions through or over the Common Areas as the Board may from time to time determine to be in the best interest of the Association;

D. Impose such charges for late payment of assessments and, after notice and an opportunity to be heard, levy such reasonable fines for violations of this Declaration, the Governing Documents, or rules and regulations of the Association, as the Board may from time to time determine to be in the best interest of the Association;

E. Impose such reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments as the Board may from time to time determine to be in the best interest of the Association;

F. Contract for and maintain such policy or policies of insurance as the Board may from time to time determine to be in the best interest of the Association, including liability and property damage insurance for the Common Areas, Common Property, Stormwater Ponding Areas, Erosion And Drainage Control Devices, Walking/Jogging Trail and Hiking Trail, and such insurance as may be necessary to protect adjacent property owners from the failure of the Erosion And Drainage Control Devices;

G. Commence, intervene in, and maintain such legal or administrative actions or proceedings as the Board may from time to time determine to be in the best interest of the Association, and do so in the name of the Association and on its own behalf or on behalf of any Owner who consents thereto;

H. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

I. Exercise for the Association all powers, duties and authority in or delegated to the Association and not reserved to the membership by other provisions of this Bylaws, the Articles of Incorporation, or the Declaration.

J. To do and take any and acts which may be necessary, reasonable, or incidental to, the exercise of any of the Board's powers and duties.

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors shall be held quarterly without notice to members, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.



**Section 11. *Quorum.*** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 12. *Action Taken Without a Meeting.*** The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE VII - Officers and Their Duties**

**Section 1. *Enumeration of Offices.*** The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

**Section 2. *Election of Officers.*** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

**Section 3. *Term.*** The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**Section 4. *Special Appointments.*** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 5. *Resignation and Removal.*** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. *Vacancies.*** A vacancy in office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 7. *Multiple Offices.*** The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

**Section 8. *Duties of Officers.*** The duties of the officers are as follows:

A. The President shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds, and other written instruments; and co-sign all checks in excess of \$500 and all promissory notes.

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



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

D. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; sign all checks less than or equal to \$500; co-sign with the President or Vice-President all checks in excess of \$500 and all promissory notes of the Association; keep proper books of account; and prepare an annual budget and a statement of income and expenditures, to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members. The Board of Directors shall determine annually whether a public accountant should review the Association books for the year. If the Board of Directors determines a review is appropriate, the Treasurer shall cause such a review to be made.

#### **ARTICLE VIII - Committees**

An Architectural Board shall be appointed as provided in the Declaration and these Bylaws. The Board of Directors shall appoint other committees as it deems appropriate in carrying out its purpose.

#### **ARTICLE IX - Amendments**

These Bylaws may be amended, at a regular or special meeting of the members, by a vote of two-thirds (2/3) of the members present in person or by proxy.

#### **ARTICLE X - Miscellaneous**

**Section 1. *Fiscal Year.*** The fiscal year of the Association shall be determined by the Board of Directors.

**Section 2. *Limitation of Association's Liability.*** The Association shall not be liable for any failure of any service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by an Owner or other person, or resulting from electricity, water, rain, dust, or sand, which may leak or flow from outside or from any part of the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Association. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomforts arising from the making of repairs or improvements to the Common Areas or from any action taken to comply with any law, ordinance, or orders of a governmental authority.

**Section 3. *Indemnification of Board of Directors, Officers and Association.*** Each member of the Board of Directors, officers and the AB shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them



in connection with any proceeding to which they may be a party, or in which they may become involved by reason of their being of having been a member of the Board of Directors, an officer, or member of the AB, or any settlement thereof, whether or not they are a member of the Board of Directors, an officer, or member of the AB at the time such expenses are incurred, except in such cases wherein the member of the Board of Directors, officer or member of the AB is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification shall apply when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

**Section 4. Books and Records.** The books, records, and papers of the Association shall, at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

**Section 5. Assessments.** As more fully provided in the Declaration, each member is obligated to pay to the Association general and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessment which is not paid when due shall bear interest from the date of delinquency at the rate provided in the Declaration. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action may be recovered, together with the delinquent amount. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot or residence.

Amended this 18<sup>th</sup> day of January, 2005 in accordance with Article IX above.

Attest:

Kachina Hills Owners Association

By: Jim Hays  
Secretary

By: McBride  
President



