

BYLAWS  
OF  
THE UNIT OWNERS ASSOCIATION  
OF  
SNOWSHOE MOUNTAIN LODGE CONDOMINIUM  
A  
CONDOMINIUM LOCATED WITHIN THE  
SNOWSHOE RESORT  
IN  
POCAHONTAS COUNTY, WEST VIRGINIA

## TABLE OF CONTENTS

### Articles and Sections

	<u>Page Number</u>
<b>1. General Provisions</b>	
1.1 Applicability	1
1.2 Office	1
1.3 Definitions	1
<b>2. Unit Owners Association</b>	
2.1 Composition	2
2.2 Annual Meetings	2
2.3 Place of Meetings	2
2.4 Special Meetings	2
2.5 Notice of Meetings	2
2.6 Adjournment of Meetings	3
2.7 Order of Business	3
2.8 Title to Units	3
2.9 Voting	3
2.10 Proxies	3
2.11 Quorum	4
2.12 Conduct of Meetings	4
<b>3. Executive Board</b>	
3.1 Power and Duties	4
3.2 Managing Agent	6
3.3 Number and Term of Office	7
3.4 Elections of Executive Board Members	7
3.5 Removal or Resignation of Executive Board Members	8
3.6 Vacancies	8
3.7 Organization Meetings	8
3.8 Regular Meetings	8
3.9 Special Meetings	8
3.10 Waiver of Notice	8
3.11 Quorum of Executive Board	9
3.12 Fidelity Bonds	9
3.13 Compensation	9
3.14 Conduct of Meetings	9
3.15 Action Without Meeting	9
3.16 Liability of the Executive Board Members, Officers, Unit Owners and Unit Owners Association	9

3.17	Common or Interested Executive Board Members	10
3.18	Executive Board as Attorney-in-Fact	10

#### **4. Officers**

4.1	Designation	11
4.2	Election of Officers	11
4.3	Removal of Officers	11
4.4	President	11
4.5	Vice President	11
4.6	Secretary	11
4.7	Treasurer	11
4.8	Execution of Documents	12
4.9	Compensation of Officers	12

#### **5. Operation of the Property**

5.1	Determination of Common Expenses and Assessments Against Unit Owners	12
5.2	Payment of Common Expenses	13
5.3	Collection of Assessments	14
5.4	Statement of Common Expenses	14
5.5	Maintenance, Repair, Replacement and Other Common Expenses	14
5.6	Additions, Alterations or Improvements by the Executive Board	15
5.7	Additions, Alterations or Improvements by the Unit Owners	15
5.8	Restrictions on Use of Units; Rules and Regulations	16
5.9	Right of Access	17
5.10	Utility Charges	18
5.11	Parking Spaces	18
5.12	Storage Cubicles; Disclaimer of Bailee Liability	18

#### **6. Insurance**

6.1	Authority to Purchase; Notice	18
6.2	Physical Damage Insurance	19
6.3	Liability Insurance	20
6.4	Other Insurance	20
6.5	Separate Insurance	21
6.6	Insurance Trustee	21

#### **7. Repair and Reconstruction After Fire or other Casualty**

7.1	When Repair and Reconstruction are Required	21
7.2	Procedure for Reconstruction and Repair	21
7.3	Disbursement of Construction Funds	22
7.4	When Reconstruction is Not Required	22

## **8. Mortgages**

8.1	Notice to Executive Board	23
8.2	Notice of Default, Casualty or Condemnation	23
8.3	Notice of Amendment of Declaration of Bylaws	23
8.4	Mortgagee's Approvals	23
8.5	Other Rights of Mortgagees	24

## **9. Compliance and Default**

9.1	Relief	24
9.2	Lien for Assessments	25
9.3	Supplemental Enforcement of the Lien	25
9.4	Subordination and Mortgage Protections	26

## **10. Amendments to Bylaws and Declaration**

10.1	Amendments	26
10.2	Approval of Mortgagees	26

## **11. Miscellaneous**

11.1	Notices	26
11.2	Captions	27
11.3	Gender	27
11.4	Construction	27

<b>Signature Page</b>	<b>28</b>
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## **Amendments Passed – Sections of the Bylaws**

Bylaw Section 3.3(a)		29
Bylaw Section 3.3(b)		29
Bylaw Section 3.1(q)	October 19, 1989	30
Bylaw Section 3.1(r)	October 19, 1989	30
Bylaw Section 3.1(v)	October 19, 1989	30
Bylaw Section 5.5(a)	October 19 1989	31
Bylaw Section 5.5(b)	October 19, 1989	31
Bylaw Section 5.6	October 19, 1989	31
Bylaw Section 5.1(h)	April 16, 1997	32
Rule & Regulation	December 30, 2003	33

## BYLAWS

### ARTICLE 1

#### General Provisions

- 1.1 **APPLICABILITY.** These Bylaws provide for the governance of the Snowshoe Mountain Lodge Condominium pursuant to the requirements of Article 3 of the Uniform Condominium Act. The Property, located in Pocahontas County, West Virginia and more particularly described in the Declaration, has been submitted to the provisions of the Uniform Condominium Act by recordation simultaneously herewith of the Declaration among the land records of Pocahontas County, West Virginia.
- 1.2 **OFFICE.** The office of the Condominium, the Unit Owners Association, and the Executive Board shall be located at the Property or at such other place as may be designated from time to time by the Executive Board.
- 1.3 **DEFINITIONS.** Terms used herein without definition shall have the meanings specified for such terms in the Declaration to which these Bylaws are attached as an Exhibit or, if not defined therein, the meanings specified for such terms in section 1-103 of the Uniform Condominium Act. The following terms have the following meanings in the Condominium Instruments;
- (a) "Declarant Control Period" means the period prior to the earlier of (i) the date units to which seventy-five percent or more of the aggregate Percentage Interests appertain have been conveyed to Unit Owners other than the Declarant or (ii) the date three-five years after the first Condominium Unit has been conveyed to a Unit Owner other than the Declarant, (the maximum time period permitted by section 36B-3-103 of the Uniform Condominium Act, or (iii) the date specified in a notice from the Declarant to the Unit Owners upon which the Declarant relinquishes the rights reserved pursuant to section 36B-3-103 of the Uniform Condominium Act.
  - (b) "Limited Common Expenses" means expenses separately assessed against more than one but less than all of the condominium Units generally in accordance with the use of the services, as permitted by section 36B-3-114 of the Uniform Condominium Act.
  - (c) "Majority of the Unit Owners" means those Unit Owners owning Condominium Units to which more than fifty percent of the aggregate Percentage Interests actually voted in person or by proxy at a duly convened meeting at which a quorum is present. Any specified percentage of the Unit Owners shall mean the Unit Owners owning Condominium Units to which such percentage of Percentage Interests appertain with respect to the total Percentage Interests voting at such a meeting.
  - (d) "Mortgagee" means a Lender holding a first mortgage or first deed of trust ("Mortgage") encumbering a Condominium Unit in the Condominium.
  - (e) "Officer" means any person holding office pursuant to Article 4 of these Bylaws, but shall not mean members of the Executive Board unless such members are also officers pursuant to Article 4.
  - (f) "Percentage Interest" means the number assigned to each Unit by the Declaration which establishes each Unit's undivided interest in the Common Elements, Common Expenses and Common Profits and votes in the Unit Owners Association.
  - (g) "Reserved Common Elements" means Common Elements which have been designated by the Executive Board for the exclusive use of less than all of the Unit Owners on a temporary basis.
  - (h) "Unit Owners Association" or "Association" means the unincorporated, non-profit association of all the Unit Owners owning Condominium Units in the Condominium.

**ARTICLE 2**  
**Unit Owners Association**

- 2.1 **COMPOSITION.** The Unit Owners Association shall consist of all of the Unit Owners. The name of the Unit Owners Association shall be the name of the Condominium followed by the words "Unit Owners Association". For all purposes the Unit Owners Association shall act merely as an agent for the Unit Owners as a group. The Unit Owners Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges, arranging for the management of the Condominium and performing all of the other acts that may be required or permitted to be performed by the Unit Owners Association by the Uniform Condominium Act and the Declaration. Except as to those matters which the Uniform Condominium Act specifically requires to be performed by the vote of the Unit Owners Association, the foregoing responsibilities shall be performed by the Executive Board or Managing Agent as more particularly set forth in Article 3 of these Bylaws.
- 2.2 **ANNUAL MEETINGS.** The annual meetings of the Unit Owners Association shall be held at least sixty days before the beginning of each fiscal year on such date as may be established by the Executive Board. At such annual meetings members of the Executive Board shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 3.4 of these Bylaws. During the Declarant Control Period, the Declarant shall be entitled to designate members of the Executive Board not elected pursuant to Section 2.4. If the special meeting held pursuant to Section 2.4 is held within six months of a scheduled annual meeting, the annual meeting shall not be held until the following year.
- 2.3 **PLACE OF MEETINGS.** Meetings of the Unit Owners Association shall be held at the principal office of the Unit Owners Association or at such other suitable place convenient to the Unit Owners as may be designated by the Executive Board.
- 2.4 **SPECIAL MEETINGS.**
- (a) The President shall call a special meeting of the Unit Owners Association if so directed by resolution of the Executive Board or, after the termination of the Declarant Control Period, upon a petition signed and presented to the Secretary by Unit Owners of not less than twenty-five percent of the aggregate Percentage Interests. The notice of any special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
  - (b) Not later than the termination of the Declarant Control Period, a special meeting of the Unit Owners Association shall be held at which a majority of the members of the Executive Board shall be elected by the Unit Owners, including the Declarant if the Declarant owns one or more Units. If such election is held prior to the time required by this section, the members of the Executive Board elected at such election shall not take office until the earlier of the time such election is required to be held or resignation of a director appointed by the Declarant without appointment of a replacement within ten days. The elected members of the Executive Board shall assume office in the order of the highest number of votes received. Any remaining members of the Executive Board designated by the Declarant shall continue to serve until their terms expire; provided, however, that no more than two such directors may serve during the first year after the special meeting and no more than one such director may serve during the second year after the special meetings.
- 2.5 **NOTICE OF MEETINGS.** The Secretary shall give to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least ten but not more than sixty days, and of

each special meeting of the Unit Owners at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The giving of notice in the manner provided in this Section and Section 11.1 of the Bylaws shall be considered service of notice.

- 2.6 **ADJOURNMENT OF MEETINGS.** If at any meeting of the Unit Owners Association a quorum is not present, Unit Owners of a majority of the Percentage Interests who are present at such meeting in person or by proxy may adjourn the meeting to a time after the time the original meeting was called.
- 2.7 **ORDER OF BUSINESS.** The order of business at all meetings of the Unit Owners Association shall be as follows:
- (a) roll call (proof of quorum);
  - (b) proof of notice of meeting;
  - (c) reading of minutes of preceding meeting;
  - (d) reports of officers;
  - (e) report of Executive Board;
  - (f) reports of committees;
  - (g) election or appointment of inspectors of elections (when so required);
  - (h) election of members of the Executive Board (when so required);
  - (i) unfinished business; and
  - (j) new business.
- 2.8 **TITLE TO UNITS.** Title to a Unit may be taken in the name of one or more Persons, in any manner permitted by law. The Unit Owners Association may acquire, hold and transfer full legal title to one or more Condominium Units in the Condominium in its own name.
- 2.9 **VOTING.** (a) Voting at all meetings of the Unit Owners Association shall be on a percentage basis and the percentages of the vote to which each Unit Owners is entitled shall be the Percentage Interest assigned to his Unit in the Declaration. Otherwise, where the ownership of a Unit is in more than one Person, the Person who shall be entitled to cast the vote of such Unit shall be the Person named in a certificate executed by all of the owners of such Unit and filed with the Secretary or, in the absence of such named person from the meeting, the person who shall be entitled to cast the vote of such Unit shall be the person owning such Unit who is present. If more than one person owning such Unit is present, then such vote shall be cast only in accordance with their unanimous agreement pursuant to Section 3-110 of the Uniform Condominium Act. Such certificate shall be valid until revoked by a subsequent certificate similarly executed. Subject to the requirements of section 36B-3-110 of the Uniform Condominium Act, wherever the approval or disapproval of a Unit Owner is required by the Condominium Act, the Declaration or these Bylaws, such approval or disapproval shall be made only by the Person who would be entitled to cast the vote of such Unit at any meeting of the Unit Owners Association.
- (b) Except where a greater number is required by the Uniform Condominium Act, the Declaration or these Bylaws, a Majority of the Unit Owners is required to adopt decisions at any meeting of the Unit Owners Association. If the Declarant owns or holds title to one or more Units, the Declarant shall have the right at any meeting of the Unit Owners Association to cast the votes to which such Unit or Units are entitled.
  - (c) No Unit Owner may vote at any meeting of the Unit Owners Association or be elected to or serve on the Executive Board if payment of the assessment on his Unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election. There shall be no cumulative voting.
- 2.10 **PROXIES.** A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor only of another Unit Owner, the Secretary of the Unit Owners Association, the

Declarant or his Mortgagee, his attorney or management agent. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person residing over the meeting of notice of revocation from any of the persons owning such Unit. A proxy shall be void if it is not dated or purports to be revocable without notice. No proxy shall in any event be valid for a period in excess of one year after the execution thereof.

- 2.11 **QUORUM.** Except as otherwise provided in these Bylaws, the presence in person or by proxy of thirty percent or more of the Unit Owners shall constitute a quorum at all meetings of the Unit Owners Association.
- 2.12 **CONDUCT OF MEETINGS.** The President shall preside over all meetings of the Unit Owners Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat. The President may appoint a person to serve as parliamentarian at any meeting of the Unit Owners Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Unit Owners Association when not in conflict with the Declaration, these Bylaws or the Uniform Condominium Act. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

### **ARTICLE 3** Executive Board

- 3.1 **POWERS and DUTIES.** The Executive Board shall have all of the powers and duties necessary for the administration of the affairs of the Unit Owners Association and may do all such acts and things as are not by the Uniform Condominium Act, the Declaration or by these Bylaws required to be exercised and done by the Unit Owners Association. The Executive Board shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the benefit and enjoyment of the Condominium; provided, however, that such Rules and Regulations shall not be in conflict with the Uniform Condominium Act, the Declaration or these Bylaws. The Executive Board shall delegate to one of its members or to a person employed for such purpose the authority to act on behalf of the Executive Board on such matters relating to the duties of the Managing Agent (as defined in Section 3.3 hereof), if any, which may arise between meetings of the Executive Board as the Executive Board deems appropriate. In addition to the duties imposed by these Bylaws or by any resolution of the Unit Owners Association that may hereafter be adopted, the Executive Board shall on behalf of the Unit Owners Association:
- (a) Prepare and adopt an annual budget, in which there shall be expressed the assessments of each Unit Owner for the Common Expenses.
  - (b) Make Assessments against Unit Owners to defray the cost and expenses of the Condominium, establish the means and methods of collecting such assessments from the Unit Owners and establish the period of the installment payment of the annual assessment for Common Expenses.
  - (c) Provide for the operation, care, upkeep and maintenance of all of the Property and services of the Condominium.
  - (d) Designate, hire and dismiss the personnel necessary for the maintenance, operations, repair and replacement of the Common Elements and provide services for the Property and, where appropriate, provide for the compensations of such personnel and for the purchase of



equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

- (e) Collect the assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Executive Board and use the proceeds to carry out the administration of the Property.
- (f) Make and amend the Rules and Regulations.
- (g) Open bank accounts on behalf of the Unit Owners Association and designate the signatories thereon.
- (h) Make, or contract for the making of, repairs, additions and improvement to or alterations of the Property, and repairs to and restoration of the Property, in accordance with these Bylaws, after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.
- (i) Regulate the external design, appearance, use and maintenance of the common elements.
- (j) In its sole discretion impose reasonable fines upon and issue a cease and desist request to a Unit Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Uniform Condominium Act., the Condominium Instruments, the Rules and Regulations or resolutions of the Executive Board (upon petition of any Unit Owner or upon its own Motion).
- (k) From time to time, as required, provide interpretations of the Condominium Instruments, Rules and Regulations and resolutions pursuant to the intents, provisions and qualifications thereof when requested to do so by a Unit Owner or the Executive Board.
- (l) Enforce by legal means the provisions of the Declaration, these Bylaws and the Rules and Regulations, act on behalf of the Unit Owners with respect to all matters arising out of any eminent domain proceeding, and notify the Unit Owners of any litigation against the Unit Owners Association involving a claim in excess of ten percent of the amount of the annual budget.
- (m) Obtain and carry insurance against casualties and liabilities, as provided in Article 6 of these Bylaws, pay the premiums therefore and adjust and settle any claims there under.
- (n) Pay the cost of all authorized services rendered to the Unit Owners Association and not billed to Unit Owners of individual Units or otherwise provided for in Sections 5.1 and 5.2 of these Bylaws.
- (o) Keep books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the expenses of maintenance and repair of the Common Elements and any other expenses incurred. Such books and vouchers accrediting the entries therein shall be available for examination by the Unit Owners, their attorneys, accountants and authorized agents during general business hours on business days at the times and in the manner set and announced by the Executive Board for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with generally accepted accounting principles, and the same shall be audited at least once each year by an independent auditor retained by the Executive Board who shall not be a resident of the Condominium or a Unit Owner. The cost of such audit shall be a Common Expense.
- (p) Notify a Mortgagee of any default hereunder by the Unit Owner of the Unit subject to such Mortgage, if such default continues for a period exceeding thirty days.
- (q) Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements; provided, however, that the consent of at least two-thirds in number and in Percentage Interest of all Unit Owners obtained either in writing or at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required to borrow any sum in excess of Ten Thousand Dollars. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subsection (n) is not repaid by the Unit Owners Association, a Unit Owner who pays to the creditor a percentage of the total amount due equal to his Percentage Interest in the Condominium shall be entitled

to obtain from the creditor a release of any judgment or other lien which such creditor shall have filed or shall have the right to file against such Unit Owner's Condominium Unit, and the Unit Owners Association shall not be entitled to assess his Unit for payment of the remaining amount due such creditor.

- (r) Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Unit Owners Association
- (s) In its sole discretion, designate from time to time certain Common Elements as Reserved Common Elements and impose such restrictions and conditions on the use thereof as the Executive Board deems appropriate.
- (t) Furnish the "Certificate for Resale" statement required by section 36B-4-107 of the Uniform Condominium Act., within ten days after the receipt of a written request therefore from any Unit Owner.
- (u) Do such other things and acts not inconsistent with the Uniform Condominium Act., the Declaration or these Bylaws which the Executive Board may be authorized to do by a resolution of the Unit Owners Association.

3.2 **MANAGING AGENT.** The Board of Directors may employ for the Condominium a "Managing Agent" at a compensation to be established by the Board of Directors.

- (a) Requirements. The Managing Agent shall be a person or a bona fide business enterprise which manages common interest residential communities. The Managing Agent shall be a person, or shall employ persons, possessing a high level of competence in the technical skills necessary to proper management of the Condominium. The Managing Agent must be able to advise the Executive Board regarding the administrative operation of the Condominium and shall employ personnel knowledgeable in the areas of condominium insurance, accounting, contract negotiation, labor relations and condominium regulations.
- (b) Duties. The Managing Agent shall perform such duties and services as the Executive Board shall direct. Such duties and services may include, without limitation, the duties listed in subsections 3.1 (a), (c), (d), (e), (h), (i), (j), (k), (l), (m), (q), and ® of these Bylaws. The Executive Board may delegate to the Managing Agent all of the powers granted to the Executive Board by these Bylaws other than the powers set forth in subsections 3.1 (b), (f), (g), (n), (o), and (p) of these Bylaws. The Managing Agent shall perform the obligations, duties and services relating to the management of the property, the rights of Mortgages and the maintenance of reserve funds in compliance with the provisions of these Bylaws.
- (c) Standards. The Executive Board shall impose appropriate standards of performance upon the Managing Agent. Unless the Managing Agent is instructed otherwise by the Executive Board:
  - (1) the accrual method of accounting shall be employed and expenses required by these Bylaws to be charged to more than one but less than all Unit Owners shall be accounted for separately;
  - (2) two or more persons shall be responsible for handling cash to maintain adequate financial control procedures;
  - (3) cash accounts of the Unit Owners Association shall not be commingled with any other accounts;
  - (4) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Unit Owners Association whether in the form of commissions, finders fees, service fees or otherwise; and discounts received shall benefit the Unit Owners Association;
  - (5) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Unit Owners Association shall be disclosed promptly to the Executive Board; and
  - (6) a monthly financial report shall be prepared for the Unit Owners Association containing:

- (A) an Income Statement reflecting all income and expense activity for the preceding month on an accrual basis;
  - (B) an Account Activity Statement reflecting all receipt and disbursement activity for the preceding month on a cash basis;
  - (C) an Account Status Report reflecting the status of all accounts in an “actual” versus “projected” (budget) format;
  - (D) a Balance Sheet reflecting the financial condition of the Unit Owners Association on an un-audited basis;
  - (E) a Budget Report reflecting any actual or pending obligations which are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent of a major budget category (as distinct from a specific line item in an expanded chart of accounts); and
  - (F) a Delinquency Report listing all Unit Owners who are delinquent in paying condominium assessments and describing the status of any actions to collect such assessments.
- (d) Limitations. The Executive Board may employ a Managing Agent for a term not to exceed one year. Any contract with the Managing Agent must provide that it may be terminated, without payment of a termination fee, without cause on no more than ninety days written notice and with cause on no more than thirty days written notice.

### 3.3 **NUMBER AND TERM OF OFFICE.**

- (a) Designated Members. The initial Executive Board shall consist of five persons, all of whom shall be designated by the Declarant. The term of office of all of such persons shall expire at the first annual meeting. At the special meeting required by subsection 2.4 (b), a number of the persons designated by the Declarant shall resign if necessary so that a majority of the members of the Board of Directors shall have been elected in accordance with subsection 2.4 (b). The persons elected shall serve for the remainder of the terms of office of the resigning members of the Board of Directors who such persons replace, or if no resignation was required, for the terms of office necessary so that the term of office of the members of the Board of Directors shall expire at the first annual meeting after their election. At the expiration of the term of office all members of the Board of Directors designated by the Declarant or elected at the special meeting held pursuant to subsection 2.4 (b), all successor directors shall be elected to serve for a term of one year.
- (b) Elected Members. No later than the first annual meeting of the Unit Owners Association, the Executive Board shall be composed of five persons. All of whom shall be unit Owners, Mortgagees (or designees of Mortgagees) or designees of the Declarant. Except for resignation or removal, the members of the Executive Board shall hold office until their respective successors shall have been elected by the Unit Owners Association.

### 3.4 **ELECTION OF EXECUTIVE BOARD MEMBERS.**

- (a) Elections Committee. At least ninety days prior to the special meeting required by Section 2.4 of these Bylaws and each annual meeting of the Unit Owners Association, the Executive Board shall appoint an Elections Committee consisting of a member of the Executive Board and at least three other Unit Owners. The Elections Committee shall develop election procedures and administer such procedures as are approved by the Executive Board.
- (b) Nominations. Persons qualified to be executive board members may be nominated for election only by a nominating petition submitted to the Chairman of the Elections Committee at least thirty-five days before the meeting at which the election is to be held signed by Unit Owners representing at least twenty Units and either signed by the nominee or accompanied by a document signed by the nominee indicating the willingness to serve as a member of the

Executive Board; provided, however, that additional nominations may be made from the floor at the meeting at which the elections are held for each vacancy on the Executive Board for which no more than one person has been nominated by petition. The nominee must either be present and consent to the nomination or have indicated in writing the willingness to serve.

- (c) Qualifications. No person shall be eligible for election as a member of the Executive Board unless he is (alone or together with one or more other Persons) a Unit Owner. No Person elected as a member of the Executive Board shall continue to serve as a member of the Executive Board if he is more than sixty days delinquent in his financial obligations to the Unit Owners Association and a lien has been filed against his unit.

- 3.5 **REMOVAL OR RESIGNATION OF EXECUTIVE BOARD MEMEBERS.** Except with respect to executive board members designated by Declarant, at any regular or special meeting duly called, any one or more of the members of the Executive Board may be removed with or without cause by a Majority of the Unit Owners and a successor may then and there be elected to fill the vacancy thus created. Any board member whose removal has been proposed by the Unit Owners shall be given at least seven days notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. A member of the Executive Board may resign at any time and, except for a director designated by the Declarant, and shall be deemed to have resigned upon the disposition of his Unit or if not in attendance at three consecutive regular meetings of the Board, unless the minutes reflect consent to such absence.
- 3.6 **VACANCIES.** Vacancies in the Executive Board caused by any reason other than the removal of a director by a vote of the Unit Owners Association shall be filled by a vote of a majority of the remaining board members at a special meeting of the Executive Board held for such purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum. Each person so elected shall be a member of the Executive Board until a successor shall be elected at the next annual meeting of the Unit Owners Association. During the Declarant Control Period, the Declarant shall designate the successor to any member previously designated by the Declarant who resigns or is removed.
- 3.7 **ORGANIZATION MEETING.** The first meeting of the Executive Board following the annual meeting of the Unit Owners Association shall be held within thirty days thereafter at such time and place as shall be fixed by the Unit Owners Association at the meeting at which such Executive Board shall have been elected, and no notice shall be necessary to the newly elected members of the Executive Board in order legally to constitute such meeting, providing a majority of the whole Executive Board is present at the meeting.
- 3.8 **REGULAR MEETINGS.** Regular meetings of the Executive Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least once every four months during each fiscal year. Notice of regular meetings of the Executive Board shall be given in writing to each director, by hand delivery, mail or telegraph, at least three business days prior to the day named for such meeting.
- 3.9 **SPECIAL MEETINGS.** Special meetings of the Executive Board may be called by the President on three business days notice to each director, given in writing by hand delivery, mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Executive Board shall be called by the President or Secretary in like manner and on like notice on written request of at least three directors.
- 3.10 **WAIVER OF NOTICE.** Any director may at any time, in writing, waive notice of any meeting of the Executive Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director, in person or by telephone communication, at any meeting of the Executive Board shall constitute a waiver of notice by him of the time, place and purpose of such

meeting. If all directors are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted at such meeting.

- 3.11 **QUORUM OF EXECUTIVE BOARD.** At all meetings of the Executive Board a majority of the board members shall constitute a quorum for the transaction of business, and the votes of a majority of the board members present at a meeting at which a quorum is present shall constitute the decision of the Executive Board. If at any meeting of the Executive Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. A member of the Executive Board who participates in a meeting by means of telephone communication shall be deemed present at the meeting for all purposes.
- 3.12 **FIDELITY BONDS.** As required by subsection 6.4 (a) hereof, there shall be obtained fidelity bonds in an amount not less than one-half the total annual condominium assessments for the year (in such form and such greater amounts as may be required by the Mortgagees) for all officers, executive board members and employees of the Unit Owners Association, including without limitation the Managing Agent, handling or responsible for Condominium funds. The premiums on such bonds shall constitute a Common Expense.
- 3.13 **COMPENSATION.** No executive board member shall receive any compensation from the Condominium for acting as such.
- 3.14 **CONDUCT OF MEETINGS.** The President shall preside over all meetings of the Executive Board and the Secretary shall keep a minute book of the Executive Board recording therein all resolutions adopted by the Executive Board and a record of all transactions and proceedings occurring at such meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Executive Board when not in conflict with the Declaration, these Bylaws or the Condominium Act.
- 3.15 **ACTION WITHOUT MEETING.** Any action by the Executive Board required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Executive Board shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Executive Board.
- 3.16 **LIABILITY OF THE EXECUTIVE BOARD MEMBERS, OFFICERS, UNIT OWNERS AND UNIT OWNERS ASSOCIATION.**
- (a) The officers and members of the Executive Board shall not be liable to the Unit Owners Association or any Unit Owner for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners Association shall indemnify and hold harmless each of the officers and board members from and against all contractual liability to others arising out of contracts made by the officers or the Executive Board on behalf of the Unit Owners Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Uniform Condominium Act, the Declaration of these Bylaws, except to the extent that such liability is satisfied by directors and officers liability insurance. Officers and members of the Executive Board shall have not personal liability with respect to any contract made by them on behalf of the Unit Owners Association. The liability of any Unit Owner arising out of any contract made by the officers or Executive Board, or out of the indemnification of the members of the Executive Board or officers, or for damages as a result of injuries arising in connection with the Common Elements solely by virtue of his ownership of a Percentage Interest therein or for liabilities incurred by the Unit Owners Association, shall be limited to the total liability multiplied by

his Percentage Interest. Every agreement made by the officers, the Executive Board or the Managing Agent on behalf of the Unit Owners Association shall, if obtainable, provide that the officers, the members of the Executive Board or the Managing Agent, as the case may be, are acting only as agents for the Unit Owners' Association and shall have no personal liability there under (except as Unit Owners), and that each Unit Owner's liability there under shall be limited to the total liability there under multiplied by his Percentage Interest. The Unit Owners Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was a member of the Executive Board, office of the Unit Owners Association or a member of the Covenants Committee, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Condominium.

- (b) The Unit Owners Association shall not be liable for any failure of water supply or other services to be obtained by the Unit Owners Association or paid for as a Common Expense, or for injury or damage to Person or property caused by the elements or by the Unit Owner of any Condominium Unit, or any other Person, or resulting from electricity, water, snow or ice which may leak or flow from or over any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment. The Unit Owners Association shall not be liable to any Unit Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or from any action taken by the Unit Owners Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

3.17 **COMMON OR INTERESTED EXECUTIVE BOARD MEMBERS.** Each member of the Executive Board shall exercise his powers and duties in good faith and with a view to the interests of the Condominium. No contract or other transaction between the Unit Owners Association and any executive board members, or between the Unit Owners Association and any corporation, firm or association (including the Declarant) in which any of the executive board members are directors or officers or are pecuniarily or otherwise interested, is either void or voidable because any such director is present at the meeting of the Executive Board or any committee thereof which authorizes or approves the contract or transaction, or because his vote is counted for such purpose, if any, of the conditions specified in any of the following subsections exists:

- (a) The fact of the common directorate or interest is disclosed or known to the Executive Board or a majority thereof or noted in the minutes, and the Executive Board authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- (b) The fact of the common directorate or interest is disclosed or known to at least a Majority of the Unit Owners, and the Unit Owners approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- (c) The contract or transaction is commercially reasonable to the Unit Owners Association at the time it is authorized, ratified, approved or executed.

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

3.18 **EXECUTIVE BOARD AS ATTORNEY-IN-FACT.** The Executive Board is hereby irrevocably appointed as agent and attorney-in-fact for the Unit Owners of all of the Units and for

each of them, to manage, control and deal with the interests of such Unit Owners in the Common Elements of the Condominium to permit the Executive Board to fulfill all of its powers, rights, functions and duties. The Executive Board is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner, each Mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to adjust and settle all claims arising under insurance policies purchased by the Executive Board and to execute and deliver releases upon the payment of claims. The Executive Board any grant and accept easements and licenses pursuant to section 36B-3-102 (a) (9) of the Condominium Act.

#### **ARTICLE 4** **Officers**

- 4.1 **DESIGNATION.** The principal officers of the Unit Owners Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President and Vice President shall be residents of the Condominium and members of the Executive Board. Any other officers may, but need not, be Unit Owners or members of the Executive Board.
- 4.2 **ELECTIONS OF OFFICERS.** The officers of the Unit Owners Association shall be elected annually by the Executive Board at the organization meeting of each new Executive Board and shall hold office at the pleasure of the Executive Board.
- 4.3 **REMOVAL OF OFFICERS.** Upon the affirmative vote of a majority of all members of the Executive Board any officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board, called for such purpose.
- 4.4 **PRESIDENT.** The President shall: be the chief executive officer of the Unit Owners Association; preside at all meetings of the Unit Owners Association and of the Executive Board; have general and active management of the business of the Unit Owners Association subject to the control of the Executive Board; see that all orders and resolutions of the Executive Board are carried into effect; and appoint committees from among the Unit Owners from time to time as the President may in his discretion decide is appropriate to assist in the conduct of the affairs of the Unit Owners Association.
- 4.5 **VICE PRESIDENT.** The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other member of the Executive Board to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Executive Board or by the President.
- 4.6 **SECRETARY.** The Secretary shall: keep the minutes of all meetings of the Unit Owners Association and of the Executive Board; have charge of such books and papers as the Executive Board may direct; give or cause to be given all notices required to be given by the Unit Owners Association; maintain a register setting forth the place to which all notices to Unit Owners and Mortgagees hereunder shall be delivered; and, in general, perform all the duties incident to the office of secretary.
- 4.7 **TREASURER.** The Treasurer shall (together with the Managing Agent): be responsible for Unit Owners Association funds and securities; keep full and accurate financial records and books of

account showing all receipts and disbursements; prepare all required financial data; deposit all monies and other valuable effects in the name of the Executive Board, the Unit Owners Association or the Managing Agent, in such depositories as may from time to time be designated by the Executive Board; and, in general, perform all the duties incident to the office of treasurer.

- 4.8 **EXECUTION OF DOCUMENTS.** All agreements, contracts, deeds, leases, checks and other instruments of the Unit Owners Association for expenditures or obligations in excess of Two Thousand Dollars, and all checks drawn upon reserve accounts, shall be executed by any two persons designated by the Executive Board. All such instruments for expenditures or obligations of Two Thousand Dollars or less, except from reserve accounts, may be executed by any one person designated by the Executive Board.
- 4.9 **COMPENSATION OF OFFICERS.** No officer who is also a member of the Executive Board shall receive any compensation from the Unit Owners Association for acting as such officer.

## **ARTICLE 5**

### Operation of the Property

- 5.1 **DETERMINATION OF COMMON EXPENSES AND ASSESSMENTS AGAINST UNIT OWNERS.**
- (a) Fiscal Year. The fiscal year of the Unit Owners Association shall be October 1 through September 30 unless otherwise determined by the Executive Board.
  - (b) Preparation and Approval of Budget. (1) At least ninety days before the beginning of each fiscal year, the Executive Board shall adopt a budget for the Unit Owners Association containing an estimate of the total amount considered necessary to pay the cost of Maintenance, operation, repair and replacement of the Common Elements and those parts of the Units which it is the responsibility of the Executive Board to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Uniform Condominium Act, the Declaration, these Bylaws or a resolution of the Unit Owners Association and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Property and the rendering to the Unit Owners of all related services. The budget shall reflect the separate assessment of Limited Common Expenses. (2) Such budget shall also include such reasonable amounts as the Executive Board considers necessary to provide working capital, a general operating reserve and reserves for contingencies and replacements. At least sixty days before the beginning of each fiscal year, the Executive Board shall send to each Unit Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Unit Owners Association.
  - (c) Assessment and Payment of Common Expenses. Subject to the provisions of subsection 9.1 (a) hereof, the total amount of the estimated funds required from assessments for the operation of the Property set forth in the budget adopted by the Executive Board shall be assessed against each Unit Owner in proportion to his respective Percentage Interest, except for Limited Common Expenses which shall be assessed against each Unit Owner benefited in proportion to the relative Percentage Interest of such Units inter se, and shall be a lien against each Unit Owner's Unit as provided in Section 9.2 of these Bylaws. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven months in such fiscal year, each Unit Owner shall be obligated to pay to the Executive Board or the Managing Agent (as determined by the Executive Board), one-twelfth of such assessment. Within ninety days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners, and to each Mortgagee requesting the same, an itemized accounting of the Common



Expenses for such fiscal year actually collected pursuant to the budget adopted by the Executive Board for such fiscal year, and show the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Executive Board, be placed in reserve accounts, be placed in a special account to be expended solely for the general welfare of the Unit Owners, or be credited according to each Unit Owner's Percentage Interest to the next monthly installments due from Unit Owners under the current fiscal year's budget, until exhausted. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their Percentage Interests and shall be payable either: (1) in full with payment of the next monthly assessment due; or (2) in not more than six equal monthly installments, as the Executive Board may determine.

- (d) Reserves. The Executive Board shall build up and maintain reasonable reserves for working capital, operations, contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Unit Owner's assessment, the Executive Board may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Percentage Interests, and which may be payable in a lump sum or in installments as the Executive Board may determine. The Executive Board shall serve notice of any further assessment on Unit Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall, unless otherwise specified in the notice, become effective with the next monthly payment which is due no more than ten days after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted monthly amount or, if such further assessment is not payable in installments, the amount of such assessment. Such assessment shall be a lien as of the effective date as set forth in the preceding subsection (c).
- (e) Initial Capital Payment. (i) Upon taking office, the first Executive Board elected or designated pursuant to these Bylaws shall determine the budget, as defined in this Section, for the period commencing thirty days after such election and ending on the last day of the fiscal year in which such selection occurs. Assessments shall be levied and become a lien against the Unit Owners during such period as provided in subsection (c) of this Section. (ii) The Declarant, as the agent of the Executive Board, will collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to twice the estimated monthly assessment for Common Expenses for such purchaser's Unit. The Declarant will deliver the funds so collected to the Executive Board to provide the necessary working capital for the Unit Owners Association. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Executive Board may determine.
- (f) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Executive Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notified of the monthly payment which is due no more than ten days after such new annual or adjusted budget is adopted.
- (g) Accounts. All sums collected by the Board of Directors with respect to assessments against the Unit Owners or from any other source may be commingled into a single fund or held for each Unit Owner in accordance with his Percentage Interest.

5.2 **PAYMENT OF COMMON EXPENSES.** Each Unit Owner shall pay the Common Expenses, including Limited Common Expenses, assessed by the Executive Board pursuant to the provision of Section 5.1. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the

Common Expenses assessed against his Unit subsequent to the date of recordation of a conveyance by him in fee of such Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefore; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within ten business days following a written request therefore to the Executive Board or Managing Agent and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that each Mortgagee who comes into possession of a Condominium Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such Mortgagee comes into possession thereof, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Condominium Units including the mortgaged Condominium Unit.

- 5.3 **COLLECTION OF ASSESSMENTS.** The Executive Board, or the Managing Agent at the request of the Executive Board, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remains unpaid for more than thirty days from the due date for payment thereof. Any assessment, or installment thereof, not paid within five days after due shall accrue a late charge in such amount as may be established from time to time by the Executive Board.
- 5.4 **STATEMENT OF COMMON EXPENSES.** The Executive Board shall promptly provide any Unit Owner, contract purchaser or Mortgagee so requesting the same in writing with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner. The Executive Board may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.
- 5.5 **MAINTENANCE, REPAIR, REPLACEMENT AND OTHER COMMON EXPENSES.**
- (a) By the Executive Board. The Executive Board shall be responsible for the maintenance, repair and replacement (unless, if in the opinion of not less than eighty percent of the Executive Board such expense was necessitated by the negligence, misuse or neglect of a Unit Owner) of all of the Common Elements (including the Limited Common Elements) as defined herein or in the Declaration, whether located inside or outside of the Units, the cost of which shall be charged to all Unit Owners as a Common Expense; provided, however, that each Unit Owner shall perform normal maintenance on the Limited Common Elements appurtenant to this Unit and any portion of the remaining Common Elements which the Executive Board pursuant to the Rules and Regulations has given him permission to utilize, including without limitation the items enumerated in subsection (b) hereof.
  - (b) By the Unit Owner. (1) Each Unit Owner shall keep his Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damage to any other Units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Executive Board or the Managing Agent any defect or need for repairs for which the Executive Board is responsible. (2) The Unit Owner of any Unit to which a Limited Common Element balcony

is appurtenant shall perform the normal maintenance for such Limited Common Element, including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All structural repair or replacement shall be made by the Executive Board as a Common Expense, as provided in subsection (a) above. (3) Any Unit Owner permitted by the Executive Board to use a specific portion of the Common Elements for storage is responsible for the maintenance and care of such portion and shall use such portion in a safe and sanitary manner.

- (c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first class quality, but may be done with contemporary building materials and equipment. The method of approving payment vouchers for all repairs and replacements shall be determined by the Executive Board.

5.6 **ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY EXECUTIVE BOARD.** Except during the Declarant Control Period, whenever in the judgment of the Executive Board the Common Elements shall require additions, alterations or improvements costing in excess of Ten Thousand Dollars during any period of twelve consecutive months, the making of such additions, alterations or improvements requires the prior approval of a Majority of the Unit Owners, and the Executive Board shall assess all Unit Owners benefited for the cost thereof as a Common Expense (or Limited Common Expense). Any additions, alterations or improvements costing Ten Thousand Dollars or less during any period of twelve consecutive months may be made by the Executive Board without approval of the Unit Owners and the cost thereof shall constitute a Common Expense or Limited Common Expense, depending on the nature of the additions, alterations or improvements. The Ten Thousand Dollar limitation shall be increased annually by the percentage equal to any percentage increase in the annual budget of the Condominium. Notwithstanding the foregoing, if, in the opinion of not less than eighty percent of the members of the Executive Board, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such requesting Unit Owners shall be assessed therefore in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Executive Board.

5.7 **ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY THE UNIT OWNER.** No Unit Owner shall make any structural addition, alteration or improvement in or to his Unit without the prior written consent of the Executive Board. No Unit Owner shall paint or alter the exterior of his Unit, including the doors and windows, nor shall any Unit Owner paint or alter the exterior of any building, without the prior written consent of the Executive Board as appropriate. The Executive Board shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit within forty-five days after such request, and failure to do so within the stipulated time shall constitute a consent by the Executive Board or the Covenants Committee to the proposed structural addition, alteration or improvement. If any application to any governmental authority for a permit to make any such structural addition, alteration or improvement in or to any Unit requires execution by the Unit Owners Association, and provided consent has been given by the Executive Board, then the application shall be executed on behalf of the Unit Owners Association by the Executive Board only, without however incurring any liability on the part of the Executive Board or any of them to any contractor, subcontractor or material man on account of such addition, alteration or improvement, or to any person having claim for injury to person or damage to property arising therefrom. The provisions of this Section 5.7 shall not apply to Units owned by the Declarant until deeds of conveyance of such Units shall have been recorded; provided, however, that Declarant's construction or alterations shall be architecturally compatible with existing Units. The Declarant shall have the right to make such alterations or subdivisions without the consent of the Executive Board, and the Executive Board shall execute any such application required.

5.8 **RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS; RULES AND REGULATIONS.**

(a) Restrictions. Each Unit, and the Common Elements shall be occupied and used as follows:

- (1) Except for the areas of the Condominium designated for recreational use and except as provided in the Declaration, no Unit shall be used for other than housing and the related common purposes for which the Property was designed. The Executive Board may permit reasonable, temporary non-residential uses from time to time. Nothing in these Bylaws shall be construed to prohibit the Declarant from using Unit Number 139 owned by Declarant for promotional, marketing display or other general commercial purposes or from using any appropriate portion of the Common Elements for settlement of sales of Condominium Units and for warranty administration purposes.
- (2) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property or any part thereof applicable for residential use without the prior written consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Commons Elements which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be committed on the Common Elements.
- (3) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the Unit Owner or the Executive Board, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a Common Expense.
- (4) No Unit Owner shall obstruct any of the Common Elements nor shall any Unit Owner place or cause or permit anything to be placed on or in any of the Common Elements (except those areas designated for such storage by the Condominium Instruments or the Executive Board) without the approval of the Executive Board. Nothing shall be altered or constructed in or removed from the Common Elements except upon the prior written consent of the Executive Board.
- (5) The Common Elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the Units. The lobbies, vestibules, public halls and stairways shall be used for no purpose other than for normal transit.
- (6) No portion of any Unit (other than the entire Unit) shall be leased for any period except that Owners of the Davos, Innsbruck and St. Mortiz Units may lease portions of their respective units so long as at least one bedroom is included in the leased portion of such Unit. No Unit Owner shall lease a Unit for an initial period of more than thirty days other than on a written form of lease: (A) requiring the lessee to comply with the Condominium Instruments and Rules and Regulations; (B) providing that failure to comply constitutes a default under the lease, and (C) providing that the Executive Board has the power to terminate the lease or to bring summary proceedings to evict the tenant in the name of the lessor there under after forty-five days prior written notice to the Unit Owner, in the event of a default by the tenant in the performance of the lease. The Executive Board may provide a suggested standard form lease for use by Unit Owners. Each Unit Owner of a Condominium Unit shall, promptly following the execution of any lease of Condominium Unit, forward a conformed copy thereof to the Executive Board. The foregoing provisions of this paragraph, shall not apply to the Declarant, or to a

Mortgagee in possession of a Unit as a result of foreclosure, judicial sale or a proceeding in lieu of foreclosure.

- (7) Trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if they do not exceed the dimensions of and fit wholly within a standard parking space. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the Common Elements.
  - (8) The maintenance, keeping, boarding and/or raising of animals of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Common Elements, except that the keeping of small, orderly domestic pets, (e.g., dogs, cats or caged birds) not to exceed one per Unit without the approval of the Executive Board, is permitted, subject to the Rules and Regulations adopted by the Executive Board; provided, however, that such pets are not kept or maintained for commercial purposes or for breeding and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the property without notice by the Managing Agent or the Executive Board. Such pets shall not be permitted upon the Common elements unless accompanied by an adult and unless carried or leashed. Any Unit Owner who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Unit Owners Association, each Unit Owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium. All pets shall be registered and inoculated as required by law. The Executive Board may establish reasonable fees for registration of pets not to exceed the additional costs incurred by the Unit Owners Association resulting from the presence of such pets.
  - (9) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from or about any Unit or Common Elements without the prior written approval of the Executive Board.
  - (10) Sufficient carpeting, rugs and padding shall be maintained on the floor surfaces (excluding kitchens, laundry rooms, closets and bathrooms) in Units to adequately reduce transmission of sound between Units. Additional washers, dryers and other major appliances may not be installed in a Unit without the prior written approval of the Executive Board.
- (b) Changes to Rules and Regulations. Each Unit and the Common Elements shall be occupied and used in compliance with the Rules and Regulations which may be promulgated and changed by the Executive Board. Copies of the Rules and Regulations shall be furnished by the Executive Board to each Unit Owner. Changes to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Unit Owner upon request.

5.9 **RIGHT OF ACCESS.** By acceptance of his deed of conveyance, each Unit Owner thereby grants a right of access to his Unit, as provided by section 36B-3-107 of the Uniform Condominium Executive Board or the Managing Agent, or any other person authorized by the Executive Board or the Managing Agent, or any group of the fore going, for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including without limitation making inspections correcting any condition originating in his Unit or in a Common Element to which access is obtained through his Unit and threatening another Unit or the Common Elements, performing installations, alterations or repairs to the mechanical or electrical services or the Common Elements in his Unit or elsewhere in the Property or to correct any condition which violates any Mortgage; provided, however, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present.

- 5.10 **UTILITY CHARGES.** The cost of utilities serving the Condominium not individually metered to a Unit shall be Common Expenses allocated pursuant to Section 5.1 hereof.
- 5.11 **PARKING SPACES.** Parking spaces located and so designated on the Plats and Plans shall be designated as Common Elements. All parking spaces shall be used by the Unit Owners for self-service parking purposes on a “first come, first served” basis, except as the Executive Board may otherwise determine. The cost of maintenance and repair of all parking spaces shall be a Common Expense. Such charge shall be increased in proportion to any increase in the total budget for Common Expenses from year to year. During the time that Units are being sold by the Declarant, no more than five parking spaces may be restricted to the Declarant’s use for sales purposes.
- 5.12 **STORAGE CUBICLES; DISCLAIMER OF BAILEE LIABILITY.** Storage cubicles are Common elements and may be assigned to Units by appropriate resolution of the Executive Board (unless such cubicles have been assigned as Limited Common Elements). The Executive Board, the Unit Owners Association, any Unit Owner and the Declarant shall not be considered a bailee, however, of any personal property stored on the Common Elements (including property located in storage cubicles and vehicles parked on the Common Elements), whether or not exclusive possession of the particular area is given to a Unit Owner for storage or parking purposes, and shall not be responsible for the security of such personal property or for any loss or damage thereto, whether or not due to negligence, except to the extent covered by insurance in excess of any applicable deductible.

## **ARTICLE 6**

### **Insurance**

#### **6.1 AUTHORITY TO PURCHASE; NOTICE.**

- (a) Except as otherwise provided in Section 6.5, all insurance policies relating to the Property shall be purchased by the Executive Board. The Executive Board, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverage required by this Article 6 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage are so available only at demonstrably unreasonable cost. The Executive Board shall promptly furnish to each Unit Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverage obtained on behalf of the Unit Owners Association, in compliance with section 3-112(b) of the Uniform Condominium Act.
- (b) Each such policy shall provide that;
- (1) Each Unit Owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the Common Elements or membership in the Unit Owners Association.
  - (2) The insurer waives any right to claim by way of subrogation against the Declarant, the Unit Owners Association, the Executive Board, the Managing Agent or the Unit Owners, and their respective agents, employees, guests and, in the case of the Unit Owners, the members of their households.
  - (3) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy.
  - (4) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any Unit Owner (including his invitees, agents and employees) or of any member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board of Directors or the Managing Agent cure the

defect and neither shall have so cured such defect within thirty days after such demand.

- (5) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the Board of Directors and the Managing Agent and, in the case of physical damage insurance, to all Mortgagees.
- (c) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as a Unit Owner.
- (d) All policies of insurance shall be written by reputable companies licensed to do business in the State of West Virginia. Physical damage policies shall be in form and substance and with carriers acceptable to Mortgagees holding a majority of the Mortgages (based upon one vote for each Mortgage owned).
- (e) The deductible, if any, on any insurance policy purchased by the Executive Board shall be a Common Expense, except where the claim is for components of a Unit.

## 6.2 PHYSICAL DAMAGE INSURANCE.

- (a) The Executive Board shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring the entire Property (including all of the Units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishing or other personal property supplied or installed by Unit Owners), together with all air-conditioning and heating equipment and other service machinery contained therein and covering the interests of the Unit Owners Association, the Executive Board and all Unit Owners and their Mortgagees, as their interest may appear, (subject, however, to the loss payment and adjustment provisions in favor of the Executive Board as Insurance Trustee contained in Sections 6.6 and 6.7), in an amount at least equal to 80% of the then current replacement cost of the Property (exclusive of the Land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be re-determined annually by the Executive Board with the assistance of the insurance company affording such coverage).
- (b) Such policy shall also provide:
  - (1) A Waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so.
  - (2) The following endorsements (or equivalent): (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or Unit Owner or their agents when such act or neglect is not within the control of the insured, or the Unit Owners collectively; nor by any failure of the insured, or the Unit Owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit Owners collectively, have no control); (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction" or "condominium replacement cost"; and (iv) "agreed amount" or elimination of co-insurance clause: and
  - (3) That any "no other insurance" clause expressly exclude individual Unit Owners' policies from its operation so that the physical damage policy purchased by the Executive Board shall be deemed primary coverage and any individual Unit Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Executive Board hereunder provide for or be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees, unless otherwise required by law.
- (c) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any

sub policies or certificates and endorsements issued there under, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Executive Board shall obtain an appraisal from an insurance company, or such other source as the Executive Board may determine, of the then current replacement cost of the Property (exclusive of the Land, Excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Section 6.2. All Mortgagees shall be notified promptly of any event giving rise to a claim under such policy arising from damage to the Common Elements in excess of one percent of the then current replacement cost of the Property. The Mortgagees of a Unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Unit.

### **6.3 LIABILITY INSURANCE.**

The Executive Board shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage and errors and omissions coverage for board members) and property damage insurance in such limits as the Executive Board may from time to time determine, insuring each member of the Executive Board, the Managing Agent, each Unit Owner and the Declarant against any liability to the public or to the Unit Owners (and their invitees, agents and employees) arising out of, or incident to the ownership and/or use of the Common Elements. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Unit Owners Association; (iv) deletion of the normal products exclusion with respect to events sponsored by the Unit Owners Association; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability to a Unit Owner because of negligent acts of the Unit Owners Association or of another Unit Owner. The Executive Board shall review such limits once each year, but in no event shall such insurance be less than Five Hundred Thousand Dollars (\$500,000) covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained.

### **6.4 OTHER INSURANCE.**

The Executive Board shall obtain and maintain:

- (a) Adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Unit Owners Association and all others who handle, or are responsible for handling, funds of the Unit Owners Association, including the Managing Agent. Such fidelity bonds shall: (i) name the Unit Owners Association as an obligee; (ii) be written in an amount not less than one-half the total annual condominium assessments for the year or the amount required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from and definition of "employee" or similar expression.
- (b) If required by any governmental or quasi-governmental agency, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency.
- (c) Workmen's compensation coverage to the extent necessary to meet the requirements of law.
- (d) Such other insurance as the Executive Board may determine or as may be requested from time to time by a Majority of the Unit Owners.



## 6.5 SEPARATE INSURANCE.

Each Unit Owner shall have the right, at his own expense, to obtain insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability as well as upon any improvements made by him to his Unit under coverage normally called "improvements and betterments coverage"; provided, however, that no Unit Owner shall be entitled to exercise his right to acquire or maintain such insurance coverage so as to decrease the amount which the Executive Board, on behalf of all Unit Owners, may realize under any insurance policy maintained by the Executive Board or to cause any insurance coverage maintained by the Board of Directors to be brought into contribution with insurance coverage obtained by a Unit Owner. All such policies shall contain waivers of subrogation. No Unit Owner shall obtain separate insurance policies on the Condominium except as provided in this Section 6.5

## 6.6 INSURANCE TRUSTEE.

- (a) All physical damage insurance policies purchased by the Executive Board shall be for the benefit of the Unit Owners Association, the Unit Owners, their Mortgagees and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Executive Board as "Insurance Trustee" to be applied pursuant to the terms of Article 7.
- (b) The sole duty of the Executive Board as Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws, for the benefit of the insured and their beneficiaries there under.

## ARTICLE 7

### Repair and Reconstruction After Fire or Other Casualty

## 7.1 WHEN REPAIR AND RECONSTRUCTION ARE REQUIRED.

Except as otherwise provided in Section 7.4, in the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, the Executive Board shall arrange for and supervise the prompt repair and restoration of the Condominium (including any damaged Units, and the floor coverings, kitchen or bathroom fixtures and appliances initially installed therein by the Declarant, and replacements thereof installed by the Declarant, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by the Unit Owners in the Units). Notwithstanding the foregoing, each Unit Owner shall have the right to supervise the redecorating of his own Unit.

## 7.2 PROCEDURE FOR RECONSTRUCTION AND REPAIR.

- (a) Cost Estimates. Immediately after a fire or other casualty causing damage to any portion of the Condominium, the Executive Board shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including any damaged Units and any floor coverings and kitchen and bathroom fixtures and appliances initially installed by Declarant, and the replacements thereof installed by the Declarant, but not including any other furniture, furnishings, fixtures or equipment installed by the Unit Owner in the Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Executive Board as Insurance Trustee determines to be necessary.
- (b) Assessments. If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a Common Expense and a special assessment therefore shall be levied.

- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

### 7.3 **DISBURSEMENTS OF CONSTRUCTION FUNDS.**

- (a) Construction Fund and Disbursement. The proceeds of insurance collected on account of casualty, and the sums received by the Executive Board as Insurance Trustee from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:
  - (1) If the estimated cost of reconstruction and repair is less than Fifty Thousand Dollars, then the construction fund shall be disbursed in payment of such costs upon order of the Executive Board; provided, however, that upon request of twenty percent of the Mortgagees (based upon one vote for each Mortgage owned), such fund shall be disbursed pursuant to paragraph (2).
  - (2) If the estimated cost of reconstruction and repair is Fifty Thousand Dollars or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in West Virginia and employed by the Executive Board as Insurance Trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, material men, the architect and other persons who have rendered services or furnished materials in connection with the working stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of those services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.
- (b) Surplus. The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all Unit Owners in proportion of their Percentage Interests and shall be distributed in accordance with the priority of interests at law or in equity in each Unit.
- (c) Common Elements. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the cost of repairing the other Common Elements and thereafter to the cost of repairing the Units.
- (d) Certificate. The Executive Board as Insurance Trustee shall be entitled to rely upon a certificate executed by the President or Vice President, and the Secretary, certifying: (i) whether the damaged Property is required to be reconstructed and repaired; (ii) the name of the payee and the amount to be paid with respect to disbursement from any construction fund whether surplus funds to be distributed are less than the assessments paid by the Unit Owners; and (iii) all other matters concerning the holding and disbursing of any construction fund. Any such certificate shall be delivered to the Executive Board as Insurance Trustee promptly after request.

### 7.4 **WHEN RECONSTRUCTION IS NOT REQUIRED.**

In the event the Executive Board elected not to repair insubstantial damage to the Common

Elements, the Executive Board shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the Condominium and the balance of any insurance proceeds received on account of such damage shall be distributed among all Unit Owners in proportion to their respective Percentage Interests. If the Condominium shall be terminated pursuant to section 3-112 of the Uniform Condominium Act, the net assets of the Condominium together with the net proceeds of insurance policies, if any, shall be divided by the Executive Board as Insurance Trustee among all Unit Owners in proportion to their respective Percentage Interests, after first paying out of the share of each Unit Owner, to the extent sufficient therefore, the amount of any unpaid liens on his Unit in the order of priority of such liens.

## **ARTICLE 8**

### **Mortgages**

#### **8.1 NOTICE TO EXECUTIVE BOARD.**

A Unit Owner who mortgages his Unit shall notify the Executive Board of the name and address of his Mortgagee and shall file a conformed copy of the note and Mortgage with the Executive Board.

#### **8.2 NOTICE OF DEFAULT, CASUALTY OR CONDEMNATION.**

The Executive Board when giving notice to any Unit Owner of a default in paying an assessment for Common Expenses or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such Unit. Each Mortgagee shall also be promptly notified of any casualty when required by subsection 6.2 (c) hereof, of all actions taken under Article 7 and of any taking in condemnation or by eminent domain and actions of the Unit Owners Association with respect thereto. For purposes of this section only, when notice is to be given to a Mortgagee, the Executive Board shall also give such notice to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying Mortgages if the Executive Board has notice of such participation.

#### **8.3 NOTICE OF AMENDMENT OF DECLARATION OR BYLAWS.**

The Executive Board shall give notice to all Mortgagees at least thirty days prior to the date on which the Unit Owners, in accordance with the provisions of these Bylaws, materially amend the Condominium Instruments.

#### **8.4 MORTGAGEES' APPROVALS.**

Unless at least sixty-six and two-thirds percent of the Mortgagees (based upon one vote for each Mortgage owned) and at least sixty-six and two-thirds percent of the Unit Owners (other than the Declarant) have given their prior written approval, the Unit Owners Association shall not: (a) change any Unit's Percentage Interest in Common Expenses and Common Profits or in the Common Elements; (b) partition, subdivide, abandon, encumber, sell or transfer the Common Elements of the Condominium; (c) by act or omission withdraw the submission of the Property to the Uniform Condominium Act; (d) modify the method of determining and collecting assessments or allocating distributions of casualty insurance proceeds or condemnation awards; or (e) use hazard insurance proceeds for losses to the Condominium for any purpose other than repair, replacement or restoration except as provided in Section 7.4 hereof.

8.5 **OTHER RIGHTS OF MORTGAGEEES.**

All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Unit Owners Association. All such Mortgagees shall have the right to examine the books and records of the Condominium and to require the submission of annual financial reports and other budgetary information.

**ARTICLE 9**  
**Compliance and Default**

9.1 **RELIEF.**

Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Condominium Instruments and the Uniform Condominium Act as any of the same may be amended from time to time. In addition to the remedies provided in section 36B-3-115 of the Uniform Condominium Act, a default by a Unit Owner shall entitle the Unit Owners Association, acting through its Executive Board or through the Managing Agent, to the following relief:

- (a) **Additional Liability.** Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or the act, neglect or carelessness of any member of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Executive Board. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.
- (b) **Costs and Attorney's Fees.** In any proceedings arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable Attorney's fees as may be determined by the court.
- (c) **No Waiver of Rights.** The failure of the Unit Owners Association, the Executive Board or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments or the Uniform Condominium Act shall not constitute a waiver of the right of the Unit Owners Association, the Executive Board or the Unit Owner to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Unit Owners Association, the Executive Board or any Unit Owner pursuant to any term, provision, covenant or condition of the Condominium Instruments or the Uniform Condominium Act shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or the Uniform Condominium Act or at law or in equity.
- (d) **Interest.** In the event of a default by any Unit Owner in paying any sum assessed against his Condominium Unit other than for Common Expenses which continues for a period in excess of fifteen days, interest at a rate not to exceed the lower of the maximum permissible interest rate which may be charged by a Mortgagee under a Mortgage at such time or twenty-four percent per annum may be imposed in the discretion of the Executive Board on the principal amount unpaid from the date due until paid.
- (e) **Abating and Enjoining Violations by Unit Owners.** The violation of any of the Rules and Regulations adopted by the Executive Board, the breach of any Bylaw contained herein or the breach of any provision of the Declaration or the Uniform Condominium Act shall give the Executive Board addition to any other rights set forth in these Bylaws: (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist

- (f) therein contrary to the intent and meaning of the provisions hereof, and the Executive Board shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.
- (g) Legal Proceedings. Failure to comply with any of the terms of the Declaration, these Bylaws and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Unit Owners Association, The Executive Board, the Managing Agent or, if appropriate, by any aggrieved Unit Owner and shall not constitute an election of remedies.

## 9.2 **LIEN FOR ASSESSMENTS.**

- (a) Lien. The total annual assessment of each Unit Owner for Common Expenses or any special assessment, or any other sum duly levied (including without limitation fines, interest, late charges, etc.), made pursuant to these Bylaws, is hereby declared to be a lien levied against the Condominium Unit of such Unit Owner as provided in section 36B-3-115 of the Uniform Condominium Act, which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Condominium and, as to special assessments and other sums duly levied, on the first day of the next month which begins no more than seven days after delivery to the Unit Owner of notice of such special assessment or levy. The Executive Board or the Managing Agent may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien.
- (b) Acceleration. In any case where an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Executive Board, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Unit Owner and his Mortgagee by the Executive Board of the Managing Agent.
- (c) Enforcement. The Lien for assessments may be enforced and foreclosed in any manner permitted by the laws of the State of West Virginia, by power of sale pursuant to Section 9.3 hereof or action in the name of the Executive Board, or the Managing Agent, acting on behalf of the Unit Owners Association. During the pendency of such suit the Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the laws of the State of West Virginia.
- (d) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

## 9.3 **SUPPLEMENTAL ENFORCEMENT OF THE LIEN.**

In addition to the proceedings at law or in equity for the enforcement of the lien established by the Declaration, these Bylaws or the Uniform Condominium Act, all of the Unit Owners may be required by the Declarant or the Executive Board to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby and may likewise be required to secure the payment of such obligations by a declaration of trust recorded among the land records of Pocahontas County, West Virginia granting into a trustee or trustees appropriate powers to the end that, upon default in the performance of such bond such declaration of trust may

be foreclosed by such trustee or trustees acting at the direction of the Executive Board. In the event any such bonds have been executed and such declaration of trust is recorded, then any subsequent purchaser of a Unit shall take title subject thereto and shall assume the obligations provided for therein.

#### **9.4 SUBORDINATION AND MORTGAGE PROTECTION.**

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

### **ARTICLE 10**

#### **Amendments to Bylaws and Declaration**

#### **10.1 AMENDMENTS.**

These Bylaws may not be modified or amended except as provided in section 36B-2-119 of the Uniform Condominium Act; provided, however, that until the expiration of the Declarant Control Period, Sections 2.2, 2.9, 3.3, and 10.1 may not be amended without the prior written consent of the Declarant. All amendments to the Declaration and Bylaws shall be prepared, executed, certified and recorded by the Secretary.

#### **10.2 APPROVAL OF MORTGAGEES.**

These Bylaws contain provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions in these Bylaws are to be construed as covenants for the protections of such Mortgagees on which they may rely in making loans secured by Mortgages. Accordingly, no amendment or modification of the Bylaws impairing or affecting such rights, priorities, remedies or interests of a Mortgagee shall be adopted without the prior written consent of such Mortgagee.

### **ARTICLE 11**

#### **Miscellaneous**

#### **11.1 NOTICES.**

All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (i) if to a Unit Owner, at the addresses which the Unit Owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Unit Owner, or (ii) if to the Unit Owners Association, the Executive Board or to the Managing Agent, at the principal office of the Managing Agent or at such other address as shall be designated by notice in writing to the Unit

Owners pursuant to this Section. If a Unit is owned by more than one Person, each such Person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

11.2 **CAPTIONS.**

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

11.3 **GENDER.**

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

11.4 **CONSTRUCTION.**

These Condominium Instruments are intended to comply with all of the applicable provisions of the Uniform Condominium Act (Chapter 36B of the West Virginia Code) and shall be so interpreted and applied.

Amendments to the Bylaws of  
The Unit Owners Association of  
Snowshoe Mountain Lodge Condominium

Subsection 3.3(a), last sentence, amend as follows:

At the expiration of the term of office all members of the Board of Directors designated by the Declarant or elected at the special meeting held pursuant to subsection 2.4(b), all successor directors shall be elected to serve for a term of one year until the 1987 annual meeting of the Unit Owners Association. At that time, directors shall be elected to terms of office as specified in subsection 3.3(b).

Subsection 3.3(b), amend by adding the following:

At the 1987 annual meeting of the Unit Owners Association, two members of the executive Board shall be elected to serve for a term of two years and three members for a term of one year. At the expiration of the term of office of the three members elected for one year, all successor members shall be elected to serve for a term of two years.



SNOWSHOE MOUNTAIN LODGE UNIT OWNERS ASSOCIATION

AMENDEMENTS TO BYLAWS

October 19, 1989

BYLAW SECTION 3.1(q)

NOTE. This section would be modified as underlined. Balance remains as is.

Borrow money on behalf of the Condominium when required in connection with any one instance relating to the operation, care, upkeep and maintenance of the Common Elements; provided, however, that the consent of a least two-thirds in number and in Percentage Interest of all Unit Owners obtained either in writing or at a meeting duly called and held for such purposes in accordance with the provisions of these Bylaws, shall be required to borrow any sum for these purposes in excess of ten percent of the Common Expenses budget for the fiscal year in which the loan is required; provided, further that any sum of money borrowed which is fully secured by Condominium Units to which the Association has acquired title under Subsection (r) hereof, will not be counted for the purpose of determining the borrowing limit of this subsection; provided, also, that nothing contained in this subsection shall limit or prohibit in any way the borrowing of any sum of money under Subsection (v) hereof, for the operation of housekeeping, maintenance, or other services for the benefit of the unit owners. Any sum borrowed pursuant to the authority contained in this subsection (q) must be paid in full by the end of the fiscal year in which borrowed, and no additional amounts may be borrowed in succeeding fiscal years until the debt is repaid. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subsection (q) is not repaid by the Unit Owners Association, a Unit Owner who pays to the creditor a percentage of the total amount due equal to his Percentage Interest in the Condominium shall be entitled to obtain from the creditor a release from any judgment or other lien which such creditor shall have filed or shall have the right to file against such Unit Owner's Condominium Unit, and the Unit Owners Association shall not be entitled to assess his Unit for payment of the remaining amount due such creditor.

BYLAW SECTION 3.1(r)

NOTE: There would be no change to this section. Shown for information only.

Acquire, hold and dispose of Condominium Units and mortgage the same if such expenditures and hypothecations are included in the budget adopted by the Unit Owners Association.

BYLAW SECTION 3.1(v)

NOTE: This section would be completely new.

Borrow money on behalf of the Condominium, or on behalf of any housekeeping, maintenance, or other service created by or affiliated with the Unit Owners Association, or on behalf of any entity created to provide services to the Unit Owners and principally owned by the Unit Owners Association, when in the sole judgment of the Executive Board, required in connection with the sound financial operation of such services to Unit Owners; provided, that the total sum borrowed for such purposes shall not exceed ten percent of the expenses budgeted for such services in the fiscal year for which the loan is required; provided, however, that greater amounts may be borrowed upon the consent of at least two-thirds in number and Percentage Interest of all Unit Owners obtained either in writing or at a meeting duly called and held for such purposes in accordance with the provisions of these Bylaws. The provisions of subsection (q) pertaining to repayment of any sum borrowed, including the rights of Unit Owners, also pertain to this subsection (v).

#### BYLAW SECTION 5.5(a)

NOTE: Renumber existing 5.5(a) to 5.5(a)(1) and add COMPLETELY NEW 5.5(a)(2) as follows:

The Executive Board shall receive any payments or fees for the use or operation of housekeeping, maintenance, or other service which offers and provides service to Unit Owners who choose to contract with such service; provided, however, that the offering of such service to all Unit Owners in good standing and the provision of such service to only those Unit Owners who contract for it, shall not in any way relieve or affect a Unit Owner's responsibility under these Bylaws for keeping his unit in good order, condition and repair, and in a clean and sanitary condition.

#### BYLAW 5.5(b)

NOTE: This section would be modified as underlined. Balance remains as is.

Each Unit Owner shall keep his unit and its equipment, appliances and appurtenances in good working order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his unit. In addition, each Unit Owner shall be responsible for all damage to any other units or to the Common Elements resulting from his failure or negligence to make any of the repairs required by this section. Such Unit Owner shall perform his responsibility in such a manner as shall not unreasonably disturb or interfere with other Unit Owners. Each Unit Owner shall promptly report to the Executive Board or the Managing Agent any defect or need for repairs for which the Executive Board is responsible. The provisions of this section shall not prevent, prohibit, or affect the rights of the Executive Board to provide a housekeeping, maintenance, or other service to those Unit Owners who wish to contract with the Unit Owners Association, or with any entity created and principally owned by the Unit Owners Association, for services to his unit, nor the right of the Executive Board to impose, receive and collect payment for such services from those Unit Owners who have contracted for the services. Likewise, the provision of such services to those Unit Owners who contract with the Unit Owners Association, or any entity created and principally owned by the Unit Owners Association, for such services, shall not affect the duty of each Unit Owner to keep his unit and its equipment, appliances, and appurtenances in good order, condition and repair and in a clean and sanitary condition, as required by these Bylaws.

#### BYLAW SECTION 5.6

NOTE: This section would be modified as underlined. The {bracketed} portion would be deleted. Balance remains as is.

Except during the Declarant Control Period, whenever in the judgment of the Executive Board the Common Elements shall require additions, alterations or improvements costing in excess of ten percent of the Common Expenses budget for the fiscal year in which such work will be done, the making of such additions, alterations or improvements requires the prior approval of a majority of the Unit Owners, and the Executive Board shall assess all Unit Owners benefited for the cost thereof as a Common Expense (or Limited Common Expense). Any additions, alterations or improvements costing ten percent or less of the Common Expenses budget may be made by the Executive Board without approval of the Unit Owners and the cost thereof shall constitute a Common Expense or Limited Common Expense, depending on the nature of the additions, alterations or improvements. {The Ten Thousand Dollar limitation shall be increased annually by the percentage equal to any percentage increase in the annual budget of the Condominium.} Notwithstanding the foregoing, if, in the opinion of not less than eighty percent of the members of the Executive Board, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such requesting Unit Owners shall be assessed therefore in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportion as may be determined by the Executive Board.

## **MOUNTAIN LODGE ASSOCIATION - - NO-PET POLICY**

**Rule & Regulation as Revised and Effective: December 30, 2003**

The maintenance, keeping, visiting, boarding and/or raising of animals of any kind, regardless of number or size, is and shall be prohibited within any unit or upon any Common Element of Mountain Lodge Association property, by any party. This policy applies to all units whether or not enrolled in any rental program. There shall be no exceptions. Animals can present hazards relative to human safety, damage to property, cleanliness of the units and common areas, vermin, noise and other disturbances, fear of injury, etc. Animals found within Mountain Lodge units or Common Elements can be removed from the property without notice. Any unit occupants who violate this policy are subject to eviction, fine and/or such other penalties as the Executive Board deems appropriate. Any unit owner in violation of this policy is subject to fine and/or such other penalties as the Executive Board deems necessary in order to deter non-compliance with the Association's NO-Pet Policy.