

**BYLAWS**  
**OF**  
**OWL CREEK HOMES ASSOCIATION, INC.**  
**A COLORADO NON-PROFIT CORPORATION**

**ARTICLE I**  
**Object and Definitions**

1.1 Purpose. The purpose for which this Colorado non-profit Association is formed is to govern the affairs of the Owl Creek Homes, a Common Interest Community ("Common Interest Community"), located in the Town of Snowmass Village, County of Pitkin, State of Colorado. The Common Interest Community is a Common Interest Community organized in accordance with the Colorado Common Interest Ownership Act of the Colorado Revised Statutes, as amended ("CIOA"), through a Declaration ("Declaration") recorded in accordance with the provisions of such Statutes.

1.2 Assent. All present or future owners, tenants, future tenants, or any other person that might use or have an interest in any manner in the facilities of the Common Interest Community are subject to the provisions of the regulations set forth in these Bylaws. The mere acquisition or rental of any of the Units of the Common Interest Community or the mere act of occupancy of any of such Units will signify that these Bylaws are accepted, ratified and will be complied with.

1.3 Definitions. Unless otherwise specified, terms herein contained shall have the same meaning in these Bylaws as in the Declaration, the Articles of Incorporation for the Association, or the Colorado Non-profit Corporation Act as amended or CIOA. For purposes of these Bylaws, both the Colorado Non-profit Corporation Act and CIOA shall be hereinafter sometimes referred to as the "Acts". In addition, for purposes of these Bylaws, these Bylaws, the Declaration, the Articles of Incorporation for the Association, the Colorado Non-profit Corporation Act and CIOA shall be hereinafter sometimes referred to as the "Regulations".

**ARTICLE II**  
**Membership, Voting, Majority of Unit Owners, Quorum, Proxies**

2.1 Membership. Ownership of a Unit is required in order to qualify for membership in the Association. Any person on becoming an owner of a Unit ("Owner") shall automatically become a Member of the Association and be subject to these Bylaws. Such membership shall terminate without any formal Association action whenever such person ceases to own a Unit, but such termination shall not relieve or release any former Owner from any liability or obligation incurred under, or in any way connected with, the Association during the period of such ownership, or impair any rights or remedies which the Executive Board of the Association or others may have against such former Owner and Member arising out of or in any way connected with ownership and membership and the covenants and obligations incident thereto.

2.2 Voting. Voting shall be based upon one (1) vote per Unit. In voting for Members of the Executive Board of the Association, those receiving the most number of votes shall be elected without the necessity of a majority. There shall be cumulative voting for all Members of the Executive Board.

2.3 Proxies. Votes may be cast in person or by proxy. Proxies may be filed with the Secretary at or before the appointed time of each meeting.

2.4 Majority of Unit Owners. As used in these Bylaws, the term "Majority of Unit Owners" shall mean more than fifty one (51%) percent of the votes entitled to vote at a meeting of Members.

2.5 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of one-third (1/3rd) of the Members shall constitute a quorum. Except as otherwise provided in the Declaration or Articles of Incorporation or Acts, an affirmative vote of a majority of Unit Owners present, either in person or by proxy, shall be required to transact the business of any meeting, and the acts or decisions thereby undertaken shall be binding on the Unit Owners.

2.6 Removal of Executive Board. Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of Unit Owners, at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by the Declarant.

## **ARTICLE III**

### **Administration**

3.1 Association Responsibilities. The Owners of the Units will constitute the Association, who will have the responsibility of administering the Condominium through an Executive Board who shall have the authority to hire a Manager.

3.2 Place of Meeting. Meetings of the Members shall be held at such place in Pitkin County, Colorado, as the Executive Board may determine.

3.3 Annual Meeting. The first annual meeting of the Association shall be held during the month of December, in the year following the incorporation of this Association. Thereafter, the annual meetings of the Association shall be held during the month of December of each succeeding year, or on a more convenient date as determined by the Executive Board. The purpose of the annual meeting is for the election of Executive Board, by ballot of the Owners, in accordance with the requirements of these Bylaws, and the transaction of such other business of the Association as may properly come before the meeting.

3.4 Special Meetings. Special meetings of the Association may be called by the President, by a majority of the Executive Board, or by Unit Owners having ten percent (10%) of the votes of the Association.

3.5 Notice of Meetings. Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in these Bylaws shall cause notice to be hand delivered or sent pre-paid by United States mail to the mailing address of each Unit Owner or to any other mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration, these Bylaws, any budget changes and any proposal to remove an officer or Member of the Executive Board.

3.6 Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Member(s) who is present, either in person or by proxy, may adjourn the meeting, from time to time, until a quorum is obtained.

3.7 Order of Business. The order of business at the annual meeting of the Owners of Units shall be as follows:

- 3.7.1 Roll call and certifying proxies;
- 3.7.2 Proof of notice of meeting or waiver of notice;
- 3.7.3 Reading and/or disposal of unapproved minutes;
- 3.7.4 Reports of officers;
- 3.7.5 Election of Directors;
- 3.7.6 Unfinished business;
- 3.7.7 New business; and
- 3.7.8 Adjournment.

#### **ARTICLE IV** **Executive Board**

4.1 Number and Qualification. Until the time that Unit Owners other than the Declarant are authorized to elect members to the Executive Board, the Executive Board shall consist of those members named in the Articles of Incorporation of the Association, unless that Executive Board by Resolution elects to add additional members. In the event members named in the Articles of Incorporation of the Association resigns, dies or refuses to take office prior to the occurrence of either of the events described in the first sentence of this section, then the Declarant shall be entitled to elect a replacement member of the Executive Board until those events occur. At the first meeting of the Executive Board held in accordance with the preceding provisions, the Executive Board shall fix a number of members which shall be no less than three (3) nor more than seven (7). The Executive Board shall govern the affairs of this Association until their successors have been duly elected and appointed and qualified. Successor members of the Executive Board shall be elected and/or appointed at the annual membership meetings thereafter held.

4.2 Election and Term of Office. At the expiration of the initial term of office of each of the respective elected and appointed members of the Executive Board, their successors shall be elected or appointed, as the case may be, to serve a term of three (3) years. Except as is otherwise provided by these Bylaws, the members of the Executive Board shall hold office until their successors have been duly elected

or appointed, as the case may be, and qualified. The terms of at least one-third (1/3) of the members of the Executive Board, not appointed by the Declarant, shall expire annually.

4.3 Vacancies. Vacancies in the Executive Board caused by any reason may be filled by a vote of the majority of the remaining members of the Executive Board even though they may constitute less than a quorum; and each person so elected shall be a member of the Executive Board until a successor is elected.

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

4.5 Organizational Meeting. Until the time that Unit Owners other than the Declarant are authorized to elect members to the Executive Board, the Executive Board shall consist of those members named in the Articles of Incorporation of the Association, unless that Executive Board as by Resolution elected to add additional members.

4.6 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 members of the Executive Board. Notice of regular meetings of the Executive Board shall be given to each member, personally or by mail, telephone or telegraph, at least seven (7) days prior to the day named for such meeting.

4.7 Special Meetings. Special meetings of the Executive Board may be called by the President on three (3) days notice to each member, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. In addition, special meetings shall be called at the written request of two or more members of the Executive Board.

4.8 Waiver of Notice. Before or at any meeting of the Executive Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any

meeting of the Executive Board shall be a waiver of notice of the time and place thereof. If all of the members are present at any meeting of the Executive Board, no notice shall be required and any business may be transacted at such meeting. The Executive Board may take any action which they could take at any meeting by unanimous consent without a meeting. Such consent shall be in writing signed by all of the members.

4.9 Telephonic Meetings. Special Meetings of the Executive Board can be held by means of conference telephone or similar communications equipment by which all members participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

4.10 Powers and Duties. The Executive Board shall have the powers and duties necessary for the administration of the affairs of the Association, which shall include but shall not be limited to the following, all of which shall be done for and in behalf of the Unit Owners:

4.10.1 To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, and all other provisions set forth in the declaration, the Bylaws of the Association, and supplements and amendments thereto;

4.10.2 To establish, make, and enforce compliance with such reasonable rules as may be necessary for the operation, use and occupancy of the Condominium with the right to amend the same from time to time. A copy of such rules and regulations shall be delivered or mailed to each member promptly upon the adoption thereof;

4.10.3 With the assistance of the Managing Agent, if any, to incur such costs and expenses as may be necessary to keep in good order, condition and repair all of the Common Elements and all items of common personal property;

4.10.4 With the assistance of the Managing Agent, if any, to insure and keep insured all the insurable Common Elements of the property in an amount equal to their maximum insurable replacement value, in accordance with the provisions of the Declaration;

4.10.5 With the assistance of the Managing Agent, if any, to prepare, according to generally accepted accounting principles, a budget for the Association at least annually, in order to determine the amount of the Common Expenses payable by the Unit Owners to meet the Common Expenses of the Project. To allocate and assess such common charges among the Unit Owners according to their respective common ownership interests in and to the Common Elements to allocate and assess charges that are not common to all Unit Owners in accordance with the provisions of the Declaration. To cause the Association to provide for, among other things, the following services to be paid for out of the regular assessments (or special assessments, if necessary): the maintenance, repair, operation, additions, alterations and improvements of and to the Common Elements, including expenses of management; insurance relative to the Common Elements; legal and accounting services relative to the Common Elements and the Association; snow removal; and other services deemed necessary by the Executive Board for the proper maintenance of the Common Elements and operation of the Association. By majority vote of the Executive Board, to adjust, to decrease or increase the amount of the assessments, and remit or return any excess or assessments over expenses, working capital, sinking funds and reserve (for deferred maintenance and for replacement) to the Owners at the end of each operating year. To levy and collect regular and special assessments as permitted by the Declaration. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary;

4.10.6 To collect delinquent assessments (by and through the Managing Agent, if any) by suit or otherwise and to enjoin or seek damages from an Owner as is provided in the Declaration of these Bylaws. To enforce a late charge of a reasonable amount and to collect interest at the rate of eighteen (18%) percent per annum in connection with assessments remaining unpaid more than thirty (30) days from due date for payment thereof, together with all expenses, including attorneys' fees incurred;

4.10.7 To protect and defend in the name of the Association any part or all of the Condominium from loss and damage by suit or otherwise;

4.10.8 To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the Declaration and these Bylaws and to execute all such instruments evidencing such indebtedness as the Executive Board may deem necessary, and such indebtedness shall be the several obligation of all the Owners in the same proportion as they share the General Common Expenses. The persons who shall be authorized to execute promissory notes and securing instruments shall be the President and Secretary. To acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to the provisions of the Acts;

4.10.9 To enter into contracts within the scope of their duties and powers;

4.10.10 To establish a bank account for the common treasury and for all separate funds which are required or may be deemed advisable by the Executive Board;

4.10.11 To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements, and to permit examination thereof by Unit Owners and their mortgagees at convenient weekday business hours;

4.10.12 To prepare and deliver annually to each member a statement showing all receipts, expenses, or disbursements since the last such statement. To adopt and amend budgets for revenues, expenditures and reserves;

4.10.13 To maintain the Common Elements; to make or cause to be made repairs, replacements, additions, alterations and improvements to the Common Elements consistent with managing the Condominium in a first class manner and consistent with the best interests of the Unit Owners. Such duties may be delegated to the Managing



Agent, if any. To cause additional improvements to be made as part of the Common Elements to execute, ratify and confirm any ski access easements across the Common Elements as called for in the Declaration or the Map which is a part thereof;

4.10.14 In general, to carry on the administration of the Association and to do all of those things necessary and reasonable in order to carry out the governing and the operation of this Project;

4.10.15 To employ for the Association a Managing Agent who shall have and exercise all of those powers granted to it by the Executive Board, but not those powers which the Executive Board, by virtue of the Acts, may not delegate. To hire and discharge employees, independent contractors and agents other than Managing Agent;

4.10.16 To meet at least annually whereat the Managing Agent, if any, shall be in attendance;

4.10.17 To institute, defend or intervene in litigation or administrative proceedings, or seek injunctive relief for violation of the Declaration, Bylaws, or rules in the Association's name, on behalf of the Association or two (2) or more Unit Owners on matters affecting the Condominium;

4.10.18 To grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements;

4.10.19 To provide for the indemnification of the Association's officers and the Executive Board and to maintain "Directors' and Officers' liability insurance"; and

4.10.20 To exercise any other power conferred by the Regulations. To exercise any other power that may be exercised in the state by a legal entity of the same type of the Association. To exercise any other power necessary and proper for the governance and operation of the Association and reasonably inferred by the provisions contained in the Bylaws, the Declaration, or in the Acts.

4.11 Managing Agent. The Executive Board may employ for the Association a Managing Agent at a compensation established by the Executive Board, to perform such duties and services specified in the preceding section of these Bylaws and the specific power to delegate such duties is hereby reserved to the Executive Board; however, no such delegation shall relieve the Executive Board of its responsibilities under the Declaration and these Bylaws.

4.12 Reimbursement. A Board member shall be entitled to reimbursement for any actual out-of-pocket expenses which can be documented by written receipt which expenses were incurred in the proper performance of their duties.

4.13 No Compensation to Members. Elected members of the Executive Board shall receive no compensation for their services as such, unless approved by a majority vote of Owners.

4.14 No Waiver of Rights. The omission or failure of the Association or any Unit Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations or other provisions of the Declaration, the Bylaws or the rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of the Managing Agent shall have the right to enforce the same thereafter.

4.15 Fidelity Bonds. The Executive Board may require that all officers and employees of the Association and the Managing Agent handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be a common expense.

4.16 Minutes. Written minutes shall be kept of all meetings and actions of the Executive Board and any Committees acting thereunder.

## **ARTICLE V**

### **Officers**

5.1 Officers. The officers of the Association shall consist of a President, Vice President, and a Secretary-Treasurer, all of whom shall be elected from members of the Executive Board. Such officers must be members of the Executive Board, and each shall be an Owner (or representative of an Owner whose agency shall be in writing) of a Unit, or a representative of Declarant.

5.2 Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board and shall hold office at the pleasure of the Board.

5.3 Removal of Officers. Upon an affirmative vote of a majority of the members of the Executive Board, any officer may be removed, either with or without cause. 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.

5.4 President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and the Executive Board. The President shall have all the general powers and duties which are usually vested in the office of President of a non-profit corporation.

5.5 Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all meetings of the Executive Board and the minutes of all meetings of the Association; such individual shall have charge of such books and papers as the Executive Board may direct; and they shall in general, perform all the duties incident to the office of Secretary. The Secretary-Treasurer shall compile and keep up to date at the principal office of the Association a complete list of Members and their registered addresses as shown on the records of the Association. Such list shall also show opposite each Member's name the number or appropriate designation of the Unit owned by such Member, the undivided interest in the General Common Elements. Such list shall be open to inspection by Members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours. The records referred to in this subsection may be maintained by the Managing Agent. The Secretary-Treasurer shall have responsibility for all Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association; provided, however, that when a Managing Agent has been delegated the responsibility of collecting and disbursing funds, the Secretary-Treasurer's responsibility shall be to review the accounts of the Managing Agent not less often than annually.

5.6 Vice-President. The Vice-President shall take the place of the President and perform the President's duties whenever the President is 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 to act in the place of the President on an interim basis. The Vice-President shall also perform such other duties imposed by the Executive Board or by the President. The office of the Vice-President may be vacant.

**ARTICLE VI**  
**Indemnification of Officers, Executive Board and Managing Agent**

6.1 Indemnification. The Members of the Executive Board, the Managing Agent and the officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in the Acts, the provisions of which are incorporated by reference and made a part of these Bylaws.

6.2 Other. Contracts or other commitments made by the Executive Board, Officers or the Managing Agent shall be made as agent for the Unit Owners, and they shall have no personal responsibility on any such contract or commitment (except as Unit Owners), and the liability of any Unit Owner on any such contract or commitment shall be limited to such proportionate amount of the total liability owed by an Owner shall be shared proportionately by the other Owners in the same ratio as their respective interests in the Common Elements bear to one another.

**ARTICLE VII**  
**Amendments**

7.1 Amendments to Bylaws. These Bylaws may be amended only by resolution adopted by a majority of the Members of the Executive Board and ratified by a majority vote of the Members of the Association at a duly constituted meeting for such purposes; provided, however, that no amendment shall conflict with any provision of the Declaration (unless it is similarly amended) or violate any provision of the Acts.

7.2 Amendments to Articles of Incorporation. The Articles of Incorporation may be amended in the manner provided by the Acts.

**ARTICLE VIII**  
 **Holders of Security Interests**

8.1 Notice to Association. An Owner who mortgages his Unit shall notify the Association through the Managing Agent, if any, or the Secretary of the Board, giving the name and address of their mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Units". (A mortgage or a deed of trust shall hereinafter be referred to as a "Security Interest".)

8.2 Notice of Unpaid Common Assessments. The Executive Board, upon ten (10) days written notice of request and payment of the required fee (in a reasonable amount as established by the Board) by a Unit Owner or holder of a Security Interest shall promptly prepare a statement of account setting forth the amount of any unpaid assessment or other charges due and owing from such Unit Owner.

8.3 Notice of Default. When giving notice to a Unit Owner of a default in paying assessments or other default, the Board shall send a copy of such notice to each holder of a Security Interest covering such Unit whose name and address has theretofore been furnished to the Board of assessments or other default...

8.4 Holders of Security Interests. Owners shall have the right to irrevocably constitute and appoint the holder of a Security Interest as their true and lawful attorney to vote their Unit membership in this Association, and to vest in such beneficiary or its nominee any and all rights, privileges and powers that they have as Owners under the Certificate of Incorporation and Bylaws of this Association or by virtue of the Declaration. Such proxy shall become effective upon the filing of a notice by the beneficiary or mortgagee with the Secretary-Treasurer of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect, refusal of the Association, the Board, the Managing Agent, or the Unit Owners to carry out their duties as set forth in the Declaration. A release of the Security Interest shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the beneficiary of the deed of trust or mortgagee the duties and obligations of an Owner.

## **ARTICLE IX** **Nonprofit Association**

9.1 Nonprofit Aspect. This Association is not organized for profit. No Member, Owner-Member of the Executive Board, or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as a salary or compensation to, or be distributed to, or insure to the benefit of, any Member of the Executive Board. The foregoing, however, shall neither prevent nor restrict the following: (1) reasonable compensation may be paid to any Manager acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the

Association, and (2) any Member or Member of the Executive Board may, from time to time, be reimbursed for their actual and reasonable expenses incurred in connection with the administration of the affairs of the Association. The provisions herein are not applicable to any Managing Agent who shall perform their duties and functions according to written agreement for the compensation stated therein.

## **ARTICLE X**

### **Obligations of the Owner**

10.1 Assessments. Except as otherwise provided in the Declaration, all Owners shall be obligated to pay the periodic and/or special assessments imposed by the Association to meet the Common Expenses. The assessments shall be made to the Common Elements or as otherwise provided in these Bylaws. Assessments shall be due in advance. A Member shall be deemed to be in good standing and entitled to vote at any annual or special meeting of Members, within the meaning of these Bylaws, if and only if, all assessments made or levied against the Unit are paid in full.

10.2 Proof of Ownership. Any person on becoming an Owner of a Unit shall furnish to the Managing Agent or Executive Board a photo copy or a certified copy of the recorded instrument vesting that person with an interest or ownership in the Unit, which copy shall remain in the files of the Association.

10.3 Designation of Voting Representative - Proxy. If a Unit is owned by one person, his right to vote shall be established by the record title thereto. If title to a Unit is held by more than one person or by a firm, corporation, partnership, association, or other legal entity, or any combination thereof, such Unit Owner or Owners shall execute a proxy appointing and authorizing one person or alternate persons to attend all annual and special meeting of Members and thereat to cast whatever vote the Owner himself might cast if he were personally present. Such proxy shall be effective and remain in force unless voluntarily revoked, amended or sooner terminated by operation of law. Proxy shall be void if not dated or if it contains a provision causing it to be revokable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term. Absent a proxy being delivered to the Executive Board or in the event the Unit is owned by more than one (1) individual and if more than one (1) individual attends any meeting of the Association, the Executive Board shall be granted the power to determine whether to accept the vote allocated to such Unit or whether to disregard the Unit's vote, both for the purposes of any matter coming before the meeting or for determining whether a quorum exists. If only

one (1) Owner of a Unit owned by multiple Owners appears at a meeting, the Executive Board shall recognize and honor the vote of the Owner who appears.

10.4 Registration of Mailing Address. All Owners of each Unit shall have one registered mailing address to be used by the Association for mailing of monthly statements, notices, demands, and all other communications; and such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, association, or other legal entity or such combination thereof to be used by the Association. Such registered address of a Unit Owner or Owners shall be furnished by such Owners to the Managing Agent or Board upon the transfer of title; such registration shall be in written form and signed by all of the Owners of the Unit or by such person as are authorized by law to represent the interests of all of the Owners thereof.

10.5 Notice of Lien or Suit. An Owner shall give notice to the Association of every lien or encumbrance on his Unit, other than for taxes and special assessments, and notice of every suit or other proceeding which may affect the title to his Unit, and such notice shall be given in writing immediately after the Owner has knowledge thereof.

10.6 Use of Common Elements and Limited Common Elements. Except as otherwise provided in the Declaration, each Owner may use the Common Elements, those Limited Common Elements which they are entitled to use, located within the Common Interest Community in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other Owners; and subject to the rules and regulations contained in these By-Laws and established by the Executive Board.

10.7 Maintenance and Repair.

10.7.1 Every Owner must perform promptly, at their own expense, all maintenance and repair work to their own Unit which, if omitted, would affect the appearance of or the aesthetic integrity of part or all of the Condominium; and

10.7.2 An Owner shall be obligated to reimburse the Association promptly upon receipt of its statement for any expenditures incurred by it in repairing or replacing any Common Element or Limited

Common Element damaged by his negligence or by the negligence of the Owner's tenants, agents, or guests.

#### 10.8 General.

10.8.1 Each Owner shall comply strictly with the provisions of the recorded Declaration and these By-Laws and amendments thereto, and such rules and regulations as shall be adopted hereunder.

10.8.2 Each Owner shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which this Condominium is intended.

#### 10.9 Right of Entry.

10.9.1 An Owner shall and does grant to the Managing Agent, if any, or to any other person authorized by the Executive Board the right to enter their Unit in case of any emergency originating in or threatening their Unit, whether the Owner is present at the time or not.

10.9.2 An Owner shall permit other Owners, or their representatives, to enter their Unit for the purpose of performing installations, alterations or repairs to the mechanical, electrical or utilities services which, if not performed, would affect the use of other Units; provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergency, such right of entry shall be immediate.

10.10 Rules and Regulations. The Executive Board reserves the power to establish, make, and enforce compliance with such additional reasonable house rules as may be necessary for the operation, use and occupancy of this Common Interest Community, with the right to amend same from time to time. Copies of such rules and regulations adopted shall be furnished to each Owner prior to the date when the same shall become effective.

10.11 Assessments, Debts, and Other Obligations by Unit Owner. The Assessments, debts, and other obligations assumed by the Owner are:



10.11.1 All of the obligations and assessments set out in the Declaration regarding assessments;

10.11.2 The duty to abide by the Rules and Regulations set out in the Declaration;

10.11.3 To use a Unit subject to the Easements and Licenses set out in the Declaration;

10.11.4 To pay the separate tax assessment set forth in the Declaration;

10.11.5 To repair and maintain the Unit and all Limited Common Elements, if any, pursuant to the Declaration;

10.11.6 To abide by obligations and agreements set out in the Declaration, including the designation of the Association as attorney-in-fact and the obligation to pay for repair, if repair is required, and if the insurance funds are insufficient.

## **ARTICLE XI** **Enforcement**

11.1 Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules and regulations adopted by the Executive Board or the breach of any provision of the Regulations shall give the Executive Board the rights, after notice and hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

11.1.1 To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Regulations. The Executive Board shall not be deemed liable for any manner of trespass by this action; or

11.1.2 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

11.2 Fine for Violation. By resolution, following notice and hearing, the Executive Board may levy a fine of up to Two Hundred Fifty and No/100 Dollars (\$250.00) per day for each day that a violation of the Documents or Rules persists after notice and hearing, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Executive Board.

## **ARTICLE XII**

### **Records**

12.1 Records and Audits. The Association shall maintain financial records. The cost of any audit shall be a Common Expense unless otherwise provided in the Regulations.

12.2 Examination. All records maintained by the Association or the Managing Agent shall be available for examination and copying by any Unit Owner, any holder of a Security Interest in a Unit or its insurer or guarantor, or by any or their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

12.3 Records. The Association shall keep the following records:

12.3.1 An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;

12.3.2 An account for each Unit Owner showing any other fees payable by the Unit Owner;

12.3.3 A record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;

12.3.4 The most recent regularly prepared balance sheet and income and expense statement, if any, of the Association;

12.3.5 The current operating budget adopted pursuant to Section 315(1) of the CIOA and ratified pursuant to the procedures of Section 303(4) of the Act;

12.3.6 A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant;

12.3.7 A record of insurance coverage provided for the benefit of Unit Owners and the Association;

12.3.8 A record of any alteration or improvements to Units or Limited Common Elements which violate any provisions of the Declarations of which the Executive Board has knowledge;

12.3.9 A record of any violations, with respect to any portion of the Common Interest Community, of health, safety, fire or building codes or laws, ordinances, or regulations of which the Executive Board has knowledge;

12.3.10 A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;

12.3.11 Balance sheets and other records required by local corporate law;

12.3.12 Tax returns for state and federal income taxation;

12.3.13 Minutes of proceedings of incorporators, Unit Owners, Members of the Executive Board, committees of the Executive Board and waivers of notice; and

12.3.14 A copy of the most current versions of the Declaration, Bylaws, Rules and resolutions of the Executive Board, along with their exhibits and schedules.

12.4 Statement. The Executive Board or the Managing Agent shall prepare, certify and execute a statement of unpaid assessments, in accordance with the Acts. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished. This statement shall satisfy the requirements of Section 38-33.3-31.6(8) of CIOA. This statement shall be sent to the requesting Unit Owner or holder of the Security Interest within fourteen (14) days after receipt of the request by the Executive Board and such statement shall be delivered personally or be certified mail, first class postage pre-paid, return receipt requested.

### **ARTICLE XIII** **Working Capital and Reserves**

13.1 Working Capital. A working capital fund is to be established and collected from each Unit Owner other than the Declarant in the amount of one quarter's regularly budgeted initial Common Expense assessments, measured as of the date of the date of closing of each Unit, for all Units as they are closed in proportion to their respective Allocated Interests in Common Expenses. Any amounts paid into this fund shall not be considered as advance payment of assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of Declarant control. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment, with a lien on the Declarant's unsold Units pursuant to the Act. Until termination of Declarant control of the Executive Board, the working capital shall be deposited without interest in a segregated fund. While the Declarant is in control of the Executive Board, the Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions or construction costs or to make up budget deficits.

13.2 Reserves. As a part of the adoption of the regular budget the Executive Board shall include an amount which, in its reasonable business judgement, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Element improvements.

## **ARTICLE XIV**

### **Miscellaneous**

14.1 Notices. All notices to the Association or the Executive Board shall be delivered to the office of the Managing Agent, or, if there is no Managing Agent, to the office of the Association, or to such other address as the Executive Board may designate by written notice to all Unit Owners and to all holders of Security Interests in the Units who have notified the Association that they hold a Security Interest in a Unit. Except as otherwise provided, all notices to any Unit Owner shall be sent to the Unit Owner's address as it appears in the records of the Association. All notices to holders of Security Interests in the Units shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

14.2 Fiscal Year. The Executive Board shall establish the fiscal year of the Association.

14.3 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.4 Office. The principal office of the Association shall be on the Property or at such other place as the Executive Board may from time to time designate.

14.5 Compliance. These Bylaws are intended to comply with the requirements of the Acts. If any of these Bylaws shall conflict any provision of the Acts, the provisions of the Acts shall control.

14.6 Declaration Controls. If any of these Bylaws conflict with any provision of the Declaration (and assuming they do not conflict with the Acts) the Declaration shall control.

14.7 Corporate Seal. The corporate seal of the Association shall be in such form as shall be approved by resolution of the Executive Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner

reproduced. The impression of the seal may be made and attested by either the Secretary for the authentication of contracts or other papers requiring the seal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_\_.

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