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RENEE DELLINGER
REGISTER OF DEEDS
BY: ERIN GRINDSTAFF
ASSISTANT

BK: RE 475

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**SUPPLEMENTAL, AMENDED, AND RESTATED
DECLARATION OF CONDOMINIUM
SUGAR MOUNTAIN SKI AND COUNTRY CLUB CONDOMINIUM**

STATE OF NORTH CAROLINA
COUNTY OF AVERY

THIS SUPPLEMENTAL, AMENDED, AND RESTATED DECLARATION is made this 22nd day of May, 2013, by SUGAR MOUNTAIN SKI AND COUNTRY CLUB CONDOMINIUM OWNERS ASSOCIATION, INC. as Successor Declarant, hereinafter called the "Association";

WITNESSETH:

WHEREAS, RESORT INVESTMENT CORPORATION, as Declarant, did cause to be recorded that certain "Declaration of Condominium Sugar Mountain Ski and Country Club", hereinafter called the "Declaration," for Sugar Mountain Ski and Country Club Condominium (the "Condominium") in Book 141, Page 393, Avery County Public Registry and thereby subjected the Submitted Property, as defined in the Declaration, to all of the terms and provisions of the Declaration; and

WHEREAS, said Declarant did thereafter amend the Declaration by First Amendment to Declaration (the "First Amendment") recorded in Book 153, Page 323, and in Unit Ownership Book 4, Page 11, of the Avery County Registry; and by Second Amendment to Declaration (the "Second Amendment") recorded in Book 157, Page 757 of the Avery County Registry; and

WHEREAS, the Declaration was further amended by Amendment to Declaration of Condominium recorded in Book 285 at Page 339 of the Avery County Registry; and

WHEREAS, the aforementioned amendments to the Declaration added various other parcels and units to the Submitted Property and thereby to the Declaration's condominium regime; and

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WHEREAS, the Association has acquired additional property by deed recorded in Book 318 at Page 67 of the Avery County Registry that the Association desires to formally subject to the Declaration, as amended, and to define as a common element of the Condominium for the use and benefit of all the Condominium's Unit Owners; and

WHEREAS, the Unit Owners of the Condominium, by an affirmative vote of at least sixty-seven percent (67%) of the total votes allocated within the Association, have agreed to supplement the property subjected to the Declaration and to amend and restate the Declaration so that all provisions of the Declaration, as amended, with the exception of certain Plats, Plans and Exhibits extrinsic to this instrument but specifically incorporated herein by reference, shall be contained within this single unified instrument;

NOW, THEREFORE, the Association, on behalf of the Unit Owners, does hereby re-acknowledge the prior submission of the Property to the provisions of the North Carolina Unit Ownership Act, Chapter 47A, North Carolina General Statutes, and hereby re-publishes, with minor modifications, the plan for the division of the Submitted Property and the imposition of conditions, restrictions, reservations, liens and charges thereon and the individual ownership thereof, and further acknowledges that this Supplemental, Amended and Restated Declaration of Condominium and the provisions contained herein shall constitute covenants, conditions, reservations and restrictions, which shall be run with the Submitted Property and shall bind and inure to the benefit of the Association, the Unit Owners, and their respective successors, heirs and assigns and all subsequent owners of any interest in the Submitted Property, their grantees, successors, heirs, executors, administrators, legatees and/or assigns.

ARTICLE I
Definitions

As used in this Declaration and all Exhibits hereto, all amendments hereof and thereof unless the context otherwise requires, the following definitions shall prevail:

1. Act means the North Carolina Unit Ownership Act, Chapter 47A, North Carolina General Statutes, as presented constituted, and as supplemented and modified by the applicable provisions of the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes, as presently constituted.
2. Association means as defined in the Act and specifically known as Sugar Mountain Ski & Country Club Condominium Association, Inc. formed for the purpose or exercising the powers of the association of Unit Owners of this condominium, including acting as the Successor Declarant for all purposes under this Supplemental, Amended, and Restated Declaration.
3. Assessment means a share of the fund required for the payment of common expense, capital improvements or expenses which from time to time are assessed to some or all of the Unit Owners.
4. Board of Directors or Board means an executive and administrative body designed as the governing body of the Association.

5. Building means as defined in the Act and particularly any building containing the Units of Sugar Mountain Ski & Country Club.
6. By-Laws means the by-laws of the Association as they exist from time to time.
7. Common Area and Facilities or Common Elements means and includes all of the Submitted Property excluding the Units as defined in the Act.
8. Common Expenses means and includes as defined in the Act including, but not limited to:
 - a. All expenses incident to the administration, maintenance, repair, and replacements of the Submitted Property after excluding therefrom any and all expenses which are the responsibility of a particular Unit Owner as herein set forth;
 - b. Expenses determined by the Board of Directors or the Association to be common expenses;
 - c. Expenses in this Declaration and/or its Exhibits denominated as Common Expenses; and
 - d. Any other expenses declared by the Act to be Common Expenses.
9. Common Profits (also called Common Surplus) means as defined in the Act and is the excess of all receipts of the Association over and above the amount of common expenses and not otherwise reserved or designated for a specific use.
10. Condominium means Sugar Mountain Ski & Country Club as it is constituted from time to time and the Submitted Property and Units included as shown in this Declaration and the Exhibits hereto. The Condominium has been expanded to include Phase II as herein described.
11. Condominium Plat and Plans means and includes one or more plats of survey of the Submitted Property, including improvements thereon and easements thereupon, and building plans of every structure upon the Submitted Property described in the Act which are included in the Exhibits to this Declaration.
12. Condominium Unit or Unit means an individual Unit as defined herein, in the Act and as described in the Exhibits hereto together with an undivided share of the common elements, vote, common surplus and liability for common expenses and other assessments appurtenant thereto.
13. Declarant means Resort Investment Corporation, its successors and assigns.
14. Exhibits means the exhibits to this Declaration, as they may be amended from time to time.
15. Institutional Mortgage means a bank, savings and loan association, insurance company or union pension fund authorized to do business in the United States of America, an agency of the United States Government, a real estate or mortgage investment trust, and any lender generally recognized as an institute type lender, having a lien on the Property or any part or parts thereof.
16. Limited Common Area and Facilities (also called Limited Common Elements) means as defined in the Act.
17. Long Term Lease means one or more certain leases or agreements which are included in the Exhibits or shall be added by Amendment to the Exhibits and to which the Association and each and every Unit Owner is and shall be bound.

18. Majority, Majority of the Unit Owners, or Majority Vote means as defined in the Act and includes the Unit Owners to which more than fifty (50%) percent of the total number of votes in the Association are allocated.
19. Mortgage means a mortgage, deed of trust or similar recorded document granting a lien or security interest upon the Property or any part or parts thereof.
20. Occupant means any person or persons residing in a Unit.
21. Person means as defined in the Act.
22. Record or Recordation means as defined in the Act.
23. Successor Declarant means Sugar Mountain Ski and Country Club Condominium Association, Inc.
24. Submitted Property or Property means and includes the Property as it may exist from time to time as contained within the Condominium as described in the Exhibits hereto and in the Condominium Plat and Plans and includes the land, the building, and appurtenances belonging thereto and subject to all easements, rights of way, and rights of use as described herein, in the Exhibits, in the Condominium Plat and Plans and of record. The Property shall not include until, but shall include in the event of, annexation hereto by amendment hereto all land together with improvements, easements, rights of way and rights or use described herein, and in the Exhibits, described and defined as Phase II.
25. Unit Owner means as defined in the Act, and specifically owning a Unit in the Condominium.
26. Voting Member means the Unit Owner or other individual authorized to cast the votes allocated to a single Unit.

ARTICLE II

Sugar Mountain Ski & Country Club
Condominium Association

1. The administration of the affairs of the Condominium and the maintenance, repair, replacement and operation of the Common Elements as herein provided, the enforcement of all rules, regulations, By-laws and those acts required of the Association by the Declaration and/or by the Act shall be the responsibility of the Association acting through the Board of Directors. Such administration shall be in accordance with and under the powers granted by the provisions of the Act, this Declaration and the By-Laws of the Association.
2. The Association through its Board of Directors shall be and hereby is authorized to enter into such agreements and to bind itself and all Unit Owners as it may deem necessary or desirable for the administration and operation of the Condominium. Each Unit Owner who acquires an interest in a Unit shall thereby be deemed to agree to be bound by the terms and conditions of all such agreements. A copy of each such agreement shall be made available at the office of the Association for review by any Unit Owner.

3. There shall be only one Voting Member for each Unit. If a Unit is owned by more than one Person, the Owners thereof shall designate one of their number as the Voting Member authorized to vote on their behalf regarding the issue(s) pending before the Association. If an entity or fiduciary owns a Unit, a partner, trustee, officer or agent thereof shall be designated as the Voting Member of such Unit. The designation of the Voting Member shall be made as provided in the By-Laws. Each voting member (and only the Voting Member) shall be entitled to cast the vote(s) for each Unit he or she represents, on each matter submitted to a vote at a meeting of the Association, regardless of the number of Persons who own such Unit. Each Voting Member shall be entitled to cast his or her vote(s) at each meeting of the Association in person or, if permitted by the By-Laws, by proxy or written ballot circulated to the membership in advance of any meeting and stating the proposed action upon which each vote is to be taken.

ARTICLE III
Property Rights

1. The Condominium consists essentially of Units in nine (9) buildings, an Amenity Building, and other improvements and certain lands as the same are described in the Exhibits. For the purposes of the Unit designation, each Unit in the Condominium is identified by number or letter and is delineated in the Exhibits hereto which are made a part of this Declaration. No two Units have the same designation.

The aforesaid buildings and Units therein and other improvements are constructed in accordance with the plats, plans, descriptions and surveys contained in the Condominium Plat and Plans.

2. Ownership of a building and Unit includes title to the Unit and an undivided interest in the Common Elements and the Common Surplus (if any).

The undivided interests in the Common Elements, the Common Profits (if any) and the liability of Common Expenses which the Unit Owners of the Units are acquiring are set forth in the Exhibits.

3. Neither the Association, nor any Unit Owner, nor the Declarant, nor any other party who owns an interest in the Common Elements shall have the right to bring action for partition or division of the Common Elements.
4. Rules and regulations governing the use of the Submitted Property shall be promulgated by the Board of Directors. The Board of Directors may amend or repeal any rule or regulation adopted by it. All rules and regulations shall be posted in conspicuous places in the Common Elements.

5. Each Unit Owner, by acquiring his or her Unit, shall be deemed to have agreed to be bound by, among other things: (i) all rules and regulations adopted for the use of the Submitted Property; and (ii) the Declaration and the By-Laws. The Association shall have the right to deny any Unit Owner or Occupant the right to use the Common Elements for a period not to exceed thirty (30) days for a violation of the rules and regulations promulgated for the use of the Property. Any Occupant may use the Common Elements reserved for the use of the Unit he or she occupies during the time such Occupant is actually in residence in the Unit. Guests and invitees of an Occupant of a Unit and the Unit Owner of a Unit (while another occupies his unit) may only use the Common Elements with the express permission of the Board of Directors and subject to such terms and conditions as the Board of Directors may specify in its sole discretion, including the payment of a fee for the use thereof.
6. **Parking Spaces:** Parking spaces need not be reserved solely for the use of Occupants of any particular Unit nor shall they be numbered unless agreed by all Unit Owners and the Institutional Mortgagees of their Units (in which case such reserved parking spaces shall be limited Common Elements); provided, however, the Occupants of each Unit shall be entitled to the use of at least one parking space and such additional parking spaces as may be determined by the Board of Directors.
7. **Common Expenses:**
 - a. All cost of maintenance, repair, replacements of Common Elements (including General Common Elements and Limited Common Elements) necessitated by the negligence or misuse by any Occupant of a Unit shall be borne solely by the Unit Owner of such Unit and the Board of Directors shall have the right to assess such Unit Owner for such cost.
 - b. All other costs of maintenance, repair, replacements, preservation and improvements of the Common Elements (including General Common Elements and Limited Common Elements), except as provided in Paragraph C-1 of Article XII below, shall be Common Expenses unless the Board of Directors otherwise recommends and the recommendation of the Board is approved by a two-thirds majority of votes cast by the Unit Owners at a meeting of the Association with a duly constituted quorum.
8. **Development Plan:**
 - a. Declarant included within the Condominium certain property and improvements, including nine (9) buildings containing the following
 - Building 1 (1 Bedroom) – 15 Units
 - 111-115 first floor
 - 121-125-second floor
 - 131-135 third floor
 - Building 2 (2 bedroom) - 18 Units

211-216 first floor
221-226 second floor
231-236 third floor
Building 3 (2 bedroom) - 18 Units
311-316 first floor
321-326 second floor
331-336 third floor
Building 4 (2 bedroom) - 18 Units
411-416 first floor
421-426 second floor
431-436 third floor
Building 5 (2 bedroom) - 18 Units
511-516 first floor
521-526 second floor
531-536 third floor
Building 6 (2 bedroom) - 18 Units
611-616 first floor
621-626 second floor
631-636 third floor
Building 8 (2 bedroom) - 18 Units
811-816 first floor
821-826 second floor
831-836 third floor

And Phase II which includes

Building 10 – 24 Units total

Efficiency Units (formerly referred to as Ski Suites) – 16 Units

10-101 through 10-801 first floor

10-102 through 10-802 second floor

Efficiency with Loft (formerly referred to as Ski Suite with mezzanine) -
8 Units

10-103 through 10-803 (third floor)

Building 11 – 24 Units

Efficiency (formerly referred to as Ski Suites) – 16 Unites

11-101 through 11-801 first floor

11-102 through 11-802 second floor

Efficiency with Loft (formerly referred to as Ski Suite with mezzanine) - 8
Units

11-103 through 11-803 (third floor)

- b. As part of the Common Elements, an Amenity Building with swimming pool, spa, restrooms, sauna, lounge, and two spaces previously designated on the Condominium Plat and Plans as Units A and B that the original Declaration had designated for potential commercial purposes but which are Common

Element spaces administered and occupied by the Association and its employees; and two enclosed gazebos used for recreational purposes; and one enclosed gazebo now converted to a laundry facility, all of the same being shown and designed in the Exhibits hereto and in the Condominium Plat and Plans.

The Amenity Building was expanded in 2005 to add approximately 912 additional square feet of office space beyond that shown on the Condominium Plat and Plans.

c. Types of Units and Allocated Voting Rights,

There are four categories of Units within the Condominium: (a) Efficiency units (formerly referred to in this Declaration as "Ski Suite" Units), with one level of living space; (b) "Efficiency Loft" Units (formerly referred to as "ski suite mezzanine units") with an upstairs loft area; (c) One-Bedroom Units; and (d) Two-Bedroom units. Based upon fair market value at the time of creation, there is appurtenant to each Unit within a particular category of Units an equal undivided percentage share of ownership interest in the Common Elements as described in the Exhibits. There is appurtenant to each Efficiency Unit one (1) vote, to each Efficiency with Loft Unit and each One-Bedroom Unit two (2) votes, and to each Two-Bedroom Unit three (3) votes, with each unit's votes to be voted by the Voting Member as to all matters to come before the Association. There are four hundred eighteen (418) total allocated votes in the Condominium.

ARTICLE IV
Architectural Control

To preserve the original architectural appearance of the Condominium, no exterior construction of any nature whatsoever except as specified in this Declaration shall be commenced or maintained upon any building and/or Common Element and all such additions as are herein specified shall architecturally compatible with existing structures. No Unit Owner shall paint, decorate or change the color of any exterior surface, gate, fence, or roof, nor shall any Unit Owner change the design or color of the exterior or lighting, nor shall any Unit Owner install, erect or attach to any part of the exterior any sign of any kind whatsoever, nor shall any exterior addition or change, including, without limiting the generality of the foregoing, the erection or construction of any fence or wall, be made unless and until plans and specifications showing the nature, kind, shape, height, material, color and location of the same shall have been submitted to and approved in writing as to harmony exterior design, color and location in relation to the surrounding structures by the Board of Directors (or its designee). Failure of the Board of Directors (or its designee) to approve or disapprove such plans and specifications within sixty (60) days after their being submitted in writing shall constitute approval.

ARTICLE V
Expense and Common Profits

The Common Expenses of the Condominium and the monetary obligations of the Unit Owners under any agreement entered into by the Association shall be shared by the Unit Owners in the percentages set forth in the Exhibits. Such percentages shall not be altered because of any increase or decrease in the purchase price or square footage of a Unit or because of its location. Each Unit Owner's interest in the Common Profits (if any) shall be equal to his or her interest in the Common Elements.

ARTICLE VI
Amendments of the Declaration

This Declaration may be amended at the regular or any special meeting of the Association of the Condominium, called and convened in accordance with the By-Laws, upon the affirmative vote of sixty-seven percent (67%) of all the voting members of the Association; provided, however, that this Declaration may not be cancelled nor any amendment be made hereto having as its effect a termination of the Condominium without the affirmative vote or written agreement of eighty percent (80%) of the votes allocated within the Association to the Unit Owners in the Condominium and the written agreement of all Institutional Mortgagees holding mortgages of record upon the Condominium or any portion thereof as provided in the Act.

All amendments hereto shall be recorded and certified as required by the Act. No amendment(s) shall change any Unit or the proportionate share of the Common Expenses of Common Profits attributable to each Unit, nor the voting rights of any Unit unless all Unit Owners of the Condominium and all mortgagees holding any mortgages or other liens upon the Property or any amendment shall be passed which shall impair or prejudice the rights and/or priorities of any Institutional Mortgagee or change the provisions of this Declaration with respect to Institutional Mortgagees without the written approval of the Institutional Mortgagees of record.

Notwithstanding the foregoing provisions of this Article, the Association, through the Board of Directors, reserves the right to approve both alterations of the interior design and arrangement and also alterations to the boundaries between Units upon the application of the Unit Owner(s) of all the Units so altered; however, no such change shall increase the number of Units nor alter the boundary of the Common Elements, except the party wall between any Units, without amendment of this Declaration in the manner herein set forth. If the Association, through its Board of Directors, shall approve any changes in Units as provided in this paragraph, such changes shall be reflected by an amendment of this Declaration and the recording of such Condominium Plats and Plans reflecting such authorized alteration of Units and said amendment need only be executed and acknowledged by the Association, the Unit Owners, and any holder of mortgage (s) encumbering the said altered Units. Such plat shall be certified and recorded in the manner required in the Act.

Notwithstanding the foregoing provisions of this Article, it is understood and agreed that as of the time this Declaration is dated and recorded in the public records of Avery County, North Carolina, all of the improvements shown in the Exhibits have been completed and located as described and shown in the Exhibits and the Condominium Plat and Plans.

ARTICLE VII

By-Laws

The operation of the Condominium shall be governed by the By-Laws of the Association which are attached to this Declaration as an Exhibit and made part hereof. No modification of, or amendment to, the By-Laws of the Association shall be valid unless set forth in or annexed to a duly recorded amendment. The By-Laws may be amended in the manner provided for therein but no amendment to the By-Laws shall be adopted which will affect or impair the validity or priority of any mortgage upon the Submitted Property or any portion thereof without written consent of the mortgagee thereof and of all Institutional Mortgagees or record.

ARTICLE VIII

The Operating Entity

The operating entity of the Condominium shall be the Association. The Association shall have all the powers and duties set forth in the Act as well as the powers and duties granted to and imposed upon it by the Declaration and the By-Laws of the Association, and, in addition, all other powers and duties necessary to operate the Condominium which shall be exercised through its Board of Directors; provided, however, that in the event of conflict, the provisions of the Act shall control. Every Unit Owner, whether he or she has acquired his or her Unit by purchase, gift, devise, or other conveyance or transfer, by operation law or otherwise, shall be bound by this Declaration, the Act, the By-Laws, all other Exhibitions hereto and any and all Rules and Regulations of the Association.

ARTICLE IX

Assessments

The Association, through its Board of Directors, shall have the power to fix and to provide for the Common Expenses of the Condominium and such other sums as are necessary for the care, repair, replacement, maintenance, preservation and improvement of the Submitted Property. The Board of Directors shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the Common Expenses of the Condominium and such other expenses as are provided for herein, in the Act or deemed necessary and appropriate expenses of the Condominium. The procedure for the determination of sums necessary and Assessments upon Unit Owners and the method of collection of the same shall be as set forth in the By-laws of the Association, as provided herein and in the Exhibits hereto and in the Act. Included in the common expenses shall be the assessments due to Sugar Mountain Community Association, Inc., assignee of the Sugar Mountain Company restrictive covenants which are recorded in Book 73, Page 2170, Avery County, North Carolina, Public Registry) for repairs,

maintenance and services as are provided by Sugar Mountain Community Association, Inc. for services to its members and property owners within the Sugar Mountain Resort. Such assessments shall be determined under the authority provided in the said restrictive covenants and shall be collected to the same extent, on the same basis and with the same frequency as such assessments are due, payable and collected by Sugar Mountain Community Association, Inc. from other condominium units owners and other property owners with Sugar Mountain Resort. A Unit Owner shall be liable for the payment of Assessments from the date he or she acquires title to his or her Unit, which shall become payable upon issuance of a statement of assessment by the Board of Directors of the Association.

Any assessments for which payment in full is not received by the Association within ten (10) days after the due date shall be subject to a late charge not to exceed \$10.00 or 10% of the amount due, whichever is greater, to defray the expense of the late collection. Regular Assessments shall be due and payable on the first day of each month and monthly bills for the same need not be delivered or mailed to the Unit Owners by the Board; provided, however, that on or before June 1st of the preceding fiscal year, the amount of regular monthly Assessments due from each Unit Owner for each month of that year shall be mailed by the Board of Directors to each Unit Owner and provided, further, that a notice of any increase or decrease in regular monthly Assessments shall likewise be mailed or delivered to each and every Unit Owner by the Board of Directors no later than thirty (30) days prior to the time the first regular monthly Assessment so changed shall be due.

Further, the Board of Directors, on behalf of the Association, shall have a lien on each Unit together with the Common Elements appurtenant thereto in the amount of each Assessment not paid when due as provided in the Act, which assessment debt may be collected and /or the lien foreclosed upon as provided in the Act. Reasonable attorney's fees incurred by the Board of Directors incident to the collection of such Assessments or the enforcement (including but not limited to foreclosure) of such lien and /or obtained of a money judgment together with all sums advanced and/ or paid by the Association for taxes and payments on account of a superior mortgage lien(s) or encumbrance(s) which may be required to be advanced by the Association to preserve and/or protect its lien and all other charges allowed by the Act shall be payable by the delinquent Unit Owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect Assessments as provided in the Act and further may settle and/or compromise the same if deemed in its best interest.

No mortgagee of any mortgage or record or other purchaser of a Unit who obtains title to the same at the foreclosure sale upon foreclosure of such mortgage shall be liable for the share of the Common Expenses or Assessments accruing after the date of recording such mortgage but prior to the acquisition of title by such acquirer. In addition, any Unit Owner, Person having executed a contract for the purchase of a Unit shall be entitled upon request to a statement setting forth the amount of Assessment(s) past due as provided in the Act. Failure to respond timely shall extinguish the lien for such assessment(s), to be extinguished as provided in the Act. Except in the forgoing circumstances, an acquirer shall be jointly and severally liable for such expenses with the former Unit Owner.

The Board of Directors shall have the right to assign any claim and/or lien rights for the recovery of any unpaid Assessments.

No Unit Owner may exempt himself or herself from liability for his or her share of the Common Expenses or any other Assessment by waiving the use or enjoyment of any of the Common Elements or by abandoning his or her Unit.

Each Unit Owner shall pay all ad valorem and other taxes assessed against his or her Unit and agrees covenants that the Association shall not be liable for the same.

ARTICLE X
Insurance

The Board of Directors of the Association shall obtain insurance upon the Submitted Property insuring it (including both Common Elements and all Units) against all risk, all premiums of which shall be included as part of the Common Expenses. The provisions of this Article shall relate to all residential Units and Common Elements-

The Board, on behalf of the Association, shall obtain extended insurance coverage (by policies, each having, if such can be obtained, a term of not less than one (1) year) upon the Submitted Property and improvements thereon, including the Units and Common Elements, insuring the Unit Owners and their mortgagees against loss from fire, earthquake, flood (if available), vandalism and the elements (windstorm, etc.), as well as any other risks the Institutional Mortgagees described in Section 2 (if any) may deem it reasonable to require, in amount(s) sufficient to completely restore and replace the damage and/or destroyed elements in the event of loss or in the event the improvements are not to be repaired or replaced (as described in Section 6), sufficient, after pro rata division among the Units to provide funds to pay all outstanding mortgages held by Institutional Mortgagees upon Units in the Condominium, whichever is greater.

1. Any Institutional Mortgagees holding mortgages encumbering Units in the Condominium having collectively an aggregate of original principal balances of \$3,000,000 or more shall have the right to approve all such insurance policy or policies, the company or companies, insurance upon such insurance coverage, the amount(s) thereof and, if appropriate, self-insurance sufficient to cover deductibles. Declarant reserves the right to, by amendment, change the aggregate principal amount of mortgages which must be held in order for an Institutional Mortgagee to qualify for the rights granted herein.
2. Insurance premiums, and amounts sufficient to create adequate reserves for any deductibles or other potential losses not covered by insurance proceeds, are and shall be a part of the Common Expenses.

3. The Association's Board of Directors shall serve as the Insurance Trustee pursuant to G.S. §47A-24.
4. The Insurance Trustee is hereby designated and appointed as agent for the Association, its Board of Directors, each and every present and future Unit Owner thereof and each and every beneficiary of a deed of trust (if any) of each and every such Unit Owner for the purposes of this Article. Any person, by acquiring any ownership or security interest whatsoever in any Unit, shall be deemed to have appointed the Insurance Trustee as his, her or its agent for the purposes of this Article. Further, such appointment is and shall be irrevocable. In its Capacity as agent, the Insurance Trustee shall cause itself, as Insurance Trustee, to be designated as named insured and loss payee, for the benefit of those for whom it is herein designated as agent, of the insurance policies procured pursuant to Section 1 of this Article, and in such capacity to receive all proceeds from such policies and execute as duly authorized agent such releases, endorsements or other documents or things as may be necessary to be able to receive such proceeds. In the event of any casualty or loss which is less than 2/3rds (as defined in Section 6 of this Article), the Board of Directors shall be responsible to accomplish substantial reconstruction, replacement and repair, provided the Insurance Trustee shall collect the proceeds of the insurance (and to the extent appropriate, from the self-insurance fund) and distribute such proceeds (by, if appropriate, a percentage of completion basis) to the parties entitled thereto upon satisfying itself as to the effectuation of such repairs, replacement and reconstruction. In the event reconstruction is not required (in accordance with the provisions of Section 6 of this Article), the Insurance Trustee shall receive the proceeds and shall divide them pro rata, among the Units according to the percentage of Common Elements appurtenant to each Unit. The Insurance Trustee shall then pay over to the mortgagee (and, if more than one, in order of priority of lien) of that Unit, the share of proceeds appurtenant thereof up to the amount of indebtedness due such mortgagee upon his mortgage, and any balance then remaining to the Unit Owner thereof. If there be no mortgagee or other lien holder of that Unit, the entire proceeds allocable to that Unit shall be paid over to the Unit Owner thereof. The Insurance Trustee shall not be required to distribute any funds until it is satisfied in its sole judgment or assured of the parties entitled to such proceeds and the amounts to which they are entitled.
5. The proceeds of any such insurance shall be applied to reconstruct the improvements as provided in the Act; provided, however, reconstruction shall not be compulsory where it comprises the whole or more than two-thirds of the Property. In such event and in the further event that at least three-fourths (3/4ths) of the Unit Owners and their Institutional Mortgagees agree in writing not to reconstruct, the proceeds shall be divided pro rata appurtenant to each and distributed by the Insurance Trustee as provided in this Article. Otherwise, the Unit Owners shall proceed with reconstruction. In the event of pro rata division, the Institutional First Mortgagee of record shall have first claim upon such insurance proceeds delivered to the Unit

Owner of the Unit upon which such Institutional Mortgagee holds a mortgage lien to the extent of the indebtedness due and owing upon the debt which such mortgage secures.

6. If the Property is not insured or if the insurance proceeds are insufficient to cover the cost of reconstruction, rebuilding cost shall be paid by all of the Unit Owners directly affected by the damage and each shall be responsible for a share equal to the total cost times a fraction, the numerator of which is one and the denominator of which is the number of Units so directly affected. Failure or refusal of payment of any of the Unit Owners so affected shall result in a lien upon his Unit in favor of the Association in such amount and may be enforced in the manner provided for collection of unpaid Assessments herein and /or in the Act.
7. Nothing herein contained or contained in the By-Laws shall prevent or prejudice the right of each Unit Owner and /or his mortgagee(s) from insuring his Unit on his account for the benefit of himself and /or his mortgagee(s).
8. Any repair and/or restoration must be substantially in accordance with the plans and specifications for the original buildings and improvements or as the building or improvements were last constructed or according to plans approved by the Board of Directors and all Institutional Mortgagees of record, which approval shall not be unreasonably withheld.
9. The Insurance Trustee is further hereby irrevocably appointed agent for each Unit Owner, the Association, its Unit Owners and their mortgagees for the purpose of compromising and settling claims arising under insurance policies purchased under the provisions of this Article and to execute and to deliver releases therefor upon the payment of claims.
10. Should the Association fail to pay the insurance premiums when due or should the Association fail to comply with other insurance requirements required herein or by the Act or imposed by Institutional Mortgagees having the right to impose the same, said Institutional Mortgagees or any one of them shall have the right to obtain insurance policies and to advance such sums as are required to maintain or procure such insurance and to the extent of the monies so advanced said mortgagee(s) shall be subrogated to the Assessment and lien rights of the Association and its Board of Directors against the individual Unit Owners for reimbursement of such sums.
11. The Board of Directors of the Association is authorized and directed to purchase such additional insurance and for such additional purposes, including liability insurance (in an amount not less than \$500,000 per occurrence) and, if required by law or deemed advisable by it, workmen's compensation insurance, to carry out its purpose and/or to protect itself., the Condominium, its Common Elements, Units, the Unit Owners thereof and their mortgagees.

12. Any and all insurance coverage(s) obtained under Section 1 above the Association pursuant to this Article must be obtained from an insurance carrier(s) admitted and authorized to do business in the state of North Carolina, and having an Alfred M. Best Financial Rating of at least "A+15", which company(ies) shall be affirmatively presumed to be a good and responsible company(ies) and the Declarant, the Board of Directors, the Association and Institutional Mortgagees shall not be responsible for the quality or financial responsibility of the insurance company(ies) provided same are so rated and are so licensed, admitted and approved to do business and provide such coverage in the State of North Carolina.

ARTICLE XI
Use and Occupancy

1. The Unit Owner of each unit shall occupy and use his or her Unit as a single family private dwelling for residential purposes for himself or herself and the members of his or her family and/or his or her social guest or designees and for no other purpose; provided, however, nothing herein contained shall prevent any Unit Owner from leasing or renting his or her Unit to third parties; provided however, such Unit shall, if so rented or leased, be used for residential purposes only by such lessee or renter and in compliance with this Declaration and its Exhibits, the Act and Rules and Regulations properly promulgated. Such renter or lessee may be removed from the property and/or refused further entrance by the Board of Directors of the Association or its designee for non-compliance, and the Unit Owner of that Unit shall be liable for all damages caused by his or her lessee or renter and all cost of removal which shall be a lien upon his Unit the same as the lien for unpaid Common Expenses. No commercial or business activity shall be carried out in any Unit or other part of the Submitted Property and further except that the Association; its successors and assigns, may maintain and use one or both of former Units A and B of the Condominium for management, sales and/or rental offices, and commercial-vending equipment may be maintained and maintenance and laundry equipment kept and maintained in areas of the Common Elements suitable for such purposes.
2. No Unit Owner shall permit or suffer anything to be done or kept in or about his or her Unit or upon the Common Elements which will obstruct or interfere with the rights of other Unit Owners, their guest or assigns or annoy them by creating any unreasonable noises or otherwise, nor shall any Unit Owner permit or commit any nuisance or illegal act in or about the Submitted Property.
3. No animals or pets of any kind shall be kept in any Unit or on any property of the Condominium except with written consent of, and subject to, the Rules and Regulations adopted by the Board of Directors of the Association; provided, however, that in no case shall they be kept, bred or maintained for any commercial purposes; and provided, further, any animal or pet causing or creating a nuisance, or unreasonable disturbance may be permanently removed from the Submitted Property by the Board of Directors upon three (3) days written notice to the owner thereof. Once permission to allow a pet to be kept in any Unit is given, it shall not be withdrawn or terminated unless such pet has caused or created a nuisance or unreasonable disturbance as provided herein.

4. No Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of the Units or upon the general or limited Common Elements; nor shall he or she plant any type of plants, shrubbery, flower, vine or grass outside the Unit nor shall he or she cause awnings or storm shutter, screens, enclosures and the like to be affixed or attached to any Unit, limited or general Common Elements; nor shall he or she place any furniture or equipment outside a Unit except with written consent of the Board of Directors of the Association; and, further, with approved, subject to the Rules and Regulations of the Board of Directors. No clothesline or similar device shall be allowed on any portion of the Submitted Property nor shall clothes be hung anywhere except where designated by the Board of Directors. Unit Owners may not screen or enclose any exterior patio which abuts a Unit, where applicable, nor may any Unit Owner screen or enclose any exterior deck and/or balcony which abuts his or her Unit, where applicable, with any type of material without prior written consent of the Board of Directors.

No person shall use the Common Elements or any part(s) thereof or a Unit or any part of the Submitted Property in any manner contrary to, or not in accordance with, such Rules and Regulations pertaining thereto as may from time to time be promulgated by the Board of Directors of the Association.

5. The Board of Directors may, if it determines appropriate, suspend use of the Common Elements for a period of up to thirty (30) days for any violation of the provisions hereof and/or said Rules and Regulations. Such remedy is not exclusive.

ARTICLE XII

Maintenance and Alterations

- A. The Board of Directors may enter into contracts with firm(s), person(s) or corporation(s), or may join with other Condominiums and/or entities in contracting for the maintenance and/or repair of the Submitted Property and any properties belonging to the Condominium; may contract for or may join with other associations in contracting for maintenance and management of the Condominium; and may delegate to such contractor or manager all power and duties of the Association and its Board of Directors except such as are specifically required by this Declaration, by its By-Laws or by the Act to have approval of the Board of Directors and/or of the Association.
- B. There shall be no alterations or additions to the Common Elements or any part(s) thereof except as authorized by the Board of Directors and approved by not less than two-thirds majority of votes cast by the Unit Owners at a meeting of the association with a duly constituted quorum and, if such alterations or additions affect the rights of any Unit Owner and/or his Institutional Mortgagee(s) of record, subject to the consent of both. The cost of the foregoing shall be assessed as Common Expenses. Where alterations or additions as aforesaid are exclusively or substantially for the benefit of the particular Unit Owner(s) requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owner(s) exclusively or substantially benefiting therefrom. The assessment shall be levied in such proportion as may be

determined as fair and equitable by the Board of Directors taking into account the benefit to each and the relative value of each such Unit as opposed to the others so improved. Where such alterations or additions exclusively or substantially benefit Unit Owner(s) requesting same, said alterations or additions shall only be made when authorized by the Board of Directors approved by not less than seventy-five (75%) percent of the total votes of the Units Owners exclusively or substantially benefiting therefrom, and where said Unit Owners are ten (10) or less, the approval of all but one (1) shall be required.

Where the approval of Unit Owners for alterations or additions to the Common Elements of this Condominium is required, the approval of Institutional Mortgagees whose mortgage encumber Units representing not less than ninety (90%) percent of the total unpaid dollar indebtedness as to principal on said Units at said time also be required.

C. Each Unit Owner is hereby required:

1. To maintain in good condition and repair his or her Unit, all interior surfaces and the entire interior of his or her Unit and to maintain and repair the fixtures and equipment therein, including, but not limited to, the following, where applicable: air conditioning and heating units, including condensers and all appurtenances thereto wherever situated; hot water heaters; refrigerators, ranges and ovens and all other appliances; drains, plumbing fixtures and connections, sinks, and all plumbing and water lines within the Unit; interior doors; windows, screens and glass; balcony carpeting; and all exterior doors (except the painting or other finishing of the exterior of an exterior door shall be Common Expense). All utilities billed to the Condominium as a whole, rather than to individual Units, including but not limited to water, sewerage, disposal and waste fees, cable TV, and telephone, shall be a Common Expense and assessments will be apportioned pro-rata among the Units. However, if such services shall be separately metered and/or billed, each Unit Owner shall be directly responsible for the services to his or her Unit. Where a Unit is carpeted, the cost of maintaining and replacing the carpeting shall be borne by the Unit Owner of said Unit. Each Unit Owner shall maintain, care for and preserve those portions of the Limited Common Elements (if any) exclusively for his or her use or exclusively for his or her use together with certain other Unit Owners. Where there is a light fixture or fixtures attached to the exterior wall or walls of the Unit, the Unit Owner thereof shall replace the bulb(s) by the same color and bulb wattage at his or her cost and expense unless the Board of Directors decides to replace same as Common Expense.
2. Not to make or cause to be made any structural additions or alterations to his or her Unit or to the Common Elements or any part(s) thereof. Alterations within the Unit may be made with prior written consent of the Board of Directors and Institutional Mortgagee holding a mortgage upon such Unit as could be affected by such alteration. Upon approval of such alteration, the Board of Directors shall have the right to require approval of any contractor and/or sub-contractor employed by such Unit Owner for such purpose. Said parties shall comply with all Rules and Regulations adopted by the

Board of Directors. Further, such Unit Owners shall be liable for all damages to any other Unit(s), common Element(s) or Submitted Property caused by the Unit Owner's contractor, sub-contractor or employee whether such damage be caused by negligence, accident or otherwise.

3. To allow the Board of Directors or its representative, agent or employee to enter into his or her Unit for the purposes of maintenance, inspection, repair or replacement of improvements within the unit and/or Common Elements; to determine in the case of emergency, circumstances threatening the Unit and/or Common Elements; or to determine compliance with the provisions of this Declaration and/or any By-Law or Rule or Regulation of the Association.
 4. To show no signs, advertisements or notices of any type on the Common Elements, Units or building and to erect no exterior antennae or aerials except as consented to by the Board of Directors.
- D. In the Event that a Unit Owner fails to maintain his or her Unit and all parts thereof as required, make any alterations or additions without the required consent, or otherwise violates the provisions hereof, the Board of Directors, on behalf of the Association, shall have the right to proceed with an action at law for damages or to obtain an injunction to prevent such activity and/or to require compliance with the provisions hereof, with the By-Laws, the Act or any Rules and Regulations. In lieu thereof and in addition thereto, the Board of Directors shall have the right to levy an assessment against such Unit Owner for such necessary sums to remove any unauthorized additions or alterations and/or to restore the property to good condition and repair. Said assessments shall have the same force and effect as all other special assessments. The Board of Directors shall have the right to have its employees or agents, or subcontractors appointed by it, enter a Unit at all reasonable times to do such work as it deems necessary to enforce compliance with the provisions hereof.
- E. The Board of Directors shall determine the exterior color scheme of all buildings and all exterior and interior color scheme(s) of the Common Elements (subject to the approval rights of the Association), and shall be responsible for the maintenance thereof. No Unit Owner shall paint an exterior wall, door, window, or any exterior surface or place anything thereon or affix anything thereto without the written consent of the Board of Directors.
- F. The Association shall be responsible for the maintenance and repair and replacements of the Common Elements and all portions of the Submitted Property not required to be maintained and/or repaired and/or replaced by individual Unit Owners. Notwithstanding each Unit Owner's duty of maintenance, repair, replacement, and other responsibilities to his or her Unit, the Association, through its Board of Directors, may enter into an agreement with such firm(s) or company(ies) as it may determine from time to time to provide certain services and/or maintenance for and/or behalf of the Unit Owners whereby maintenance and services are provided on a regularly scheduled basis, such as air conditioning maintenance services, exterminating services and other types of maintenance and services as the Board of Directors deems advisable and for such periods of time and on such basis as it determines. Further, the

Board of Directors may lease equipment (such as telephone systems, MATV, or Cable TV service) and grant easements for the location and/or installation of the same if it determines advisable. Said agreements shall be on behalf of each of the Unit Owners and the Monthly Assessment due from each Unit Owner for Common Expenses shall be increased by such sum as the Board of Directors deems fair and equitable under the circumstances in relation to the monthly charge for said equipment maintenance or services. Each Unit Owner shall be deemed a party to such agreement with the same force and effect as though said Unit Owner has executed said agreement. It is understood and agreed that the Association through its Board of Directors shall execute said agreements as the agent for each Unit Owner. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article IX of this Declaration.

ARTICLE XIII
Termination

This Condominium may be voluntarily terminated at any time upon the terms and conditions and in the same manner set forth and described in the Act; provided, however, that unless otherwise required by law or in the Act, before the Condominium may be terminated, the Unit Owners, by an affirmative vote of at least eighty percent (80%) of the votes allocated within the Association, must agree thereto and all Institutional Mortgagees of record of any Unit or any other part of the Submitted Property of the Condominium must agree in writing to accept as security termination and to accept as security the undivided portion of the Submitted Property owned by the debtor(s) of each. In the event of such termination, all Unit Owners shall become tenants in common the real property and improvements constituting the Unit and Common Elements. The ownership of each Unit Owner upon such termination as tenant in common shall be the same percentage as his percentage ownership in the Common Elements at that time.

ARTICLE XIV
EASEMENTS

Each Person who acquires an interest in a Unit shall be deemed, thereby, to agree that: (I) if any portion of a Unit shall encroach upon any portion of the Common Elements or another Unit or any portion of the Common Elements shall encroach upon any Unit, there shall exist a valid easement for such encroachment and for the maintenance and repair of the same so long as it stands; and (ii) in the event a building or other improvement or a Unit is partially or totally destroyed and the reconstruction thereof shall create an encroachment on portions of the Common Elements or any Unit, there shall exist a valid easement for such encroachment and the maintenance thereof.

The property previously submitted to a condominium and hereby subsequently so submitted is subject to all conditions, limitations, restrictions, reservations, and all other matters of record, the rights of the United States of America, the State of North Carolina, any taxes, applicable zoning ordinances which now exist or are hereafter adopted and easements for ingress and egress, for pedestrian and vehicular purposes and for utility services and drains or are hereafter granted by

the Association for the benefit of such persons as the Association designates. The Association's Board of Directors shall have the right to grant easements and designate the beneficiaries thereof for such time as it determines in its sole discretion. No easement shall be granted by the Association if as a result thereof any buildings or other improvement in the Condominium would be structurally weakened or the security of any mortgagee of record would be adversely affected without its written consent.

The rights of all Unit Owners shall be subject to all such easements as presently exist or as are hereinafter granted.

The Association, all present and future Unit Owners and Occupants, and their respective successors, assigns, designees, invitees, licensees, and guests are hereby granted a perpetual easement over, through and across and a license to use the areas of the Common Elements in the manner for which such is ordinarily intended and are further granted a pedestrian easement over, through and across the Common Elements upon such paths and ways as are suitable for pedestrian traffic and a license to use the same.

ARTICLE XV
Certain Rights of the Association

- (a) Notwithstanding any other provisions herein, the Association shall have the power, but not the obligation, acting alone, at any time (and from time to time) to amend the Declaration to cause the same to conform to the requirements of the Federal National Mortgage Association and/or the Federal Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and "Seller's Guide Conventional Mortgages," as may be amended from time to time.
- (b) The Association shall have the rights: (I) to use or grant a portion of the Common Elements for the purpose of aiding in the sale or rental of Units; (ii) to use portions of the Submitted Property for parking for prospective purchasers or lessees of Units and such other parties as the Successor Declarant determines; (iii) to erect and display signs, billboards and placards and store and keep the same on the Submitted Property; (iv) to distribute audio and visual promotional material upon the Common Elements; and (v) to use former Units A and B as a sales and/or rental office, management office or laundry and maintenance facility.
- (c) In order to provide the Condominium with, among other things, adequate and uniform water service, sewage disposal service, utility services and television reception, the Association, acting through its Board of Directors, reserves the exclusive right to contract for the provision of such services. The Association has entered into or may enter into arrangements, binding upon the Association and the Unit Owners, with governmental authorities or private entities for furnishing such services. The charges therefor will be Common Expenses.

(d) The Association reserves the right to enter into, on behalf of the Unit Owners, agreements with other Persons for the benefit of the Condominium, the Association and the Unit Owners. The provisions of any such Agreement shall bind the Association and the Unit Owners.

THE SUCCESSOR DECLARANT SPECIFICALLY DISCLAIMS ANY INTENT TO HAVE MADE ANY WARRANTY(IES) OR REPRESENTATION(S) IN CONNECTION WITH THE SUBMITTED PROPERTY (INCLUDING ANY WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE) OR THE DOCUMENTS ESTABLISHING OR GOVERNING THE CONDOMINIUM, EXCEPT THOSE WARRANTIES AND REPRESENTATIONS (IF ANY) EXPLICITLY SET FORTH HEREIN. NO PERSON SHALL BE ENTITLED TO RELY UPON ANY WARRANTY OR REPRESENTATION NOT EXPLICITLY SET FORTH HEREIN. STATEMENTS (IF ANY) AS TO COMMON EXPENSES, TAXES, ASSESSMENTS OR OTHER CHARGES MADE BY THE DECLARANT OR ANY REPRESENTATIVE THEREOF ARE ESTIMATES ONLY AND NO WARRANTY, GUARANTEE OR REPRESENTATION IS MADE THAT THE ACTUAL AMOUNT OF SUCH COMMON EXPENSES, ASSESSMENTS OR OTHER CHARGES WILL CONFORM WITH SUCH ESTIMATES. The building and the other improvements located in the Condominium have been or will be construed substantially in accordance with the representations made in the Exhibits. Such specify the full extent of the Declarant's liability and responsibility for the materials and methods utilized in the construction of the building and the other improvements located in the Condominium.

The Declarant has previously disclaimed responsibility for any condition caused by condensation on or expansion or contraction of materials, including paint (over interior or exterior walls), for loss or injury in any way due to the elements, the water tightness (or absence thereof) of windows and doors, the collection of water within the buildings or on any portion of the Submitted Property or defects which are the result of characteristics common to the type of materials used, or for damage due to ordinary wear and tear or abusive use or any other cause, except as the Declarant and a Unit Owner may specifically agree in writing.

ARTICLE XVI
Rights of Lenders

Notwithstanding any other provision hereof, any mortgagee of record, shall:

1. Upon request, be permitted to inspect the books and records of the Association during normal business hours;
2. Receive a copy of any audit performed by or for the Association and all proposed and adopted budgets;
3. Upon request, receive written notice of all meetings of the Association and be permitted to designate a representative to attend such meetings and observe all such meetings; and

4. Receive written notice from the Association of any default by any of its mortgagors in the performance of his obligations to the Association which is not cured within thirty (30) days.

ARTICLE XVIII

Miscellaneous Provisions

- A. The Unit Owners of the respective Units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding their respective Units nor shall any Unit Owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective Units which are utilized for or serve more than one Unit, which items are hereby made a part of the Common Elements. Each Unit Owner shall, however, be deemed to own the walls and partitions which are contained in said Unit Owner's Unit and shall also be deemed to own the interior decorated and finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.; however, all load-bearing walls, and where applicable the floor between the first or ground floor and second floor located within a Unit are part of the Common Elements to the unfinished surface of said walls and/or floors.
- B. No Unit Owner may exempt himself or herself from liability for his contribution toward the common expenses or other assessments duly made by the Association and/or the Board of Directors by waiver of the use or enjoyment of any of the common elements or the recreational facilities of the Condominium or by abandonment of his Unit.
- C. Each Unit Owner shall pay all ad valorem taxes and other taxes assessed against his or her Unit and shall file any tax returns required in connection therewith. No Unit Owner shall have a right of contribution or a right of adjustment against any other Unit Owner because the value of his or her Unit as fixed by any taxing authority may differ from that stated herein.
- D. For the purposes of ad valorem taxation, the interest of the Unit Owner of a Unit in his or her Unit and Common Elements appurtenant thereto shall be considered a Unit. The value of said Unit as compared to the value of the Condominium shall be equal to the ratios of the value of the entire Condominium, including land and improvements, as has been assigned to said Unit and as set forth in this Declaration. The total of all said ratios equal 100 percent of the value of all the land and improvements contained within the Condominium.
- E. All provisions of this Declaration and all Exhibits hereto and amendments hereof shall be construed as covenants running with the land and of every part thereof and interest therein including, but not limited to, every Unit and the appurtenances thereto and every Unit Owner and/or occupant of the Submitted Property or any part thereof or owning any interest therein, his heirs, executors, successors, administrators and assignees shall be bound by all the provisions of this Declaration and Exhibits hereto and any amendments to the same and the Act.

- F. If any of the provisions of this Declaration of the Exhibits hereto, of the Act or any section, clause, phrase, word or the application thereof in any circumstances is held invalid, the validity of the remainder of same and of the application of any provision, action, sentence, clause, phrase or work in other circumstances shall not be affected thereby.
- G. Whenever notices are required to be sent hereunder, the same may be delivered to each Unit Owner either personally or by mail addressed to such Unit Owner at his or her place of residence in the Condominium unless the Unit Owner has by written notice specified a different address, email address, or facsimile number for this purpose. Proof of such mailing or personal delivery by the Association shall be given by affidavit of the person mailing or personally delivering such notice. Notices to the Association (including the Board of Directors) shall be delivered by mail to the Secretary of the Association at the Secretary's address within the Condominium or, in the case of the Secretary's absence, then to the President of the Association at his or her address in the Condominium; provided, however, that the Association may specify a different address by written notice delivered to all Unit Owners, Institutional Mortgagees of record, and any third party affected thereby. All notices shall be deemed delivered when mailed. Any party may change his or its mailing address by written notice duly receipted for. The change of the mailing address of any party as specified herein shall not require an amendment to this Declaration. Notices required to be given the personal representative of a deceased Unit Owner may be delivered either personally or by mail to such party at his, her, or its address appearing in the records of the probate court wherein the estate of such deceased Unit Owner is being administered.
- H. Pursuant to the provisions of the Act, the following person is hereby designated to receive process as provided in the Act, at the address in Avery County, North Carolina, which is set forth below:
- Turner Law Office, P.A.
136 North Water Street
Boone, NC 28607
- I. All remedies for non-compliance provided in the Act shall be in full force and effect. In addition thereto, should the Association find it necessary to bring an action to bring about compliance with any provision of law, the Act, this Declaration and/or the Exhibits attached hereto, upon finding by the Court that the violation claimed was willful or deliberate, the Unit Owner so violating shall reimburse the Association for reasonable attorneys' fees incurred in prosecuting such action.
- J. Subsequent to filing of this Declaration, the Association when authorized by a vote of the majority of the total voting members of the Association and the Institutional Mortgagees of record encumbering condominium Units who represent the majority of the dollar institutionally mortgaged indebtedness against this Condominium may, together with other owners' associations and/or others, purchase and/or acquire and enter into agreements from time to time, whereby to acquire leaseholds, memberships, and other possessory or use interest in lands and/or facilities, including, but not limited to country clubs, golf courses,

marinas and other recreational facilities, whether or not contiguous to lands of the Condominium, intended to provide for the enjoyment and/or recreation and/or benefit of the Unit Owners. The expenses of such ownership, rental, membership fees, operations, replacement and other undertakings in connection therewith shall be Common Expenses together with all other expenses and costs herein or by law defined as Common Expenses.

- K. Whenever the context so requires, the use of any gender shall be deemed to include all genders and the use of the singular shall include the plural and plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the operation and development of a Condominium.
- L. The captions used in this Declaration and the Exhibits attached hereto are inserted solely as a matter of convenience and meaning of the text of this Declaration or Exhibits hereto annexed.
- M. Where an Institutional Mortgagee by some circumstance fails to be a first mortgagee, it shall nevertheless for the purpose of the Declaration and the Exhibits hereto be deemed to be an Institutional First Mortgagee of record.
- N. If any terms, covenant, provision, phrase or other elements of this Declaration or the Exhibits hereto or the Act are held invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of this Declaration, Exhibits and the Act.
- O. Notwithstanding the fact that the present provisions of the Act are incorporated by reference and included thereby, the provisions of the Declaration and the Exhibits hereto shall be paramount to the Act as to those provisions where permissive variances are permitted; otherwise, the provisions of the Act shall prevail and shall be deemed incorporated herein.
- P. Each Unit Owner by virtue of acceptance of a Deed of Conveyance of a Unit and/or any portion of or interest in the Common Elements and other parties by virtue of their occupancy of Units or use of the Common Elements, hereby approves the provisions hereof and all covenants, terms, conditions, duties and obligations hereof and Exhibits hereto and the Act, and does agree to be bound by all terms, conditions, duties and obligations contained herein, in the Exhibits hereto and in the Act.
- Q. No Unit Owner shall bring or have any right to bring any action for partition or division of the Property.

IN WITNESS WHEREOF, this Supplemental, Amended and Restated Declaration has been executed under seal by the duly authorized officer(s) of the Association after approval by the affirmative vote of Unit Owners exercising at least sixty-seven percent (67%) of the votes allocated within the Association as of the day and year first above written.

SUGAR MOUNTAIN SKI AND COUNTRY CLUB
CONDOMINIUM ASSOCIATION, INC.

By: *Michele Sturm* (SEAL)
MICHELE STURM, President

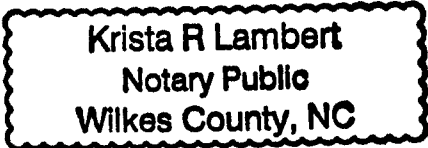
STATE OF NORTH CAROLINA
COUNTY of Watauga

I, a Notary Public of the County and State aforesaid, certify that MICHELE STURM, President of SUGAR MOUNTAIN SKI AND COUNTRY CLUB CONDOMINIUM ASSOCIATION, INC., a North Carolina nonprofit corporation, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 22nd day of May, 2013.

Krista R. Lambert
Notary Public

My commission expires: 7.23.2013



NOTORIAL SEAL

EXHIBIT 1 TO
SUPPLEMENTAL, AMENDED, AND RESTATED
DECLARATION OF CONDOMINIUM
SUGAR SKI AND COUNTRY CLUB

The Submitted Property or Property as defined in Article I, Paragraph 24 of this Supplemental, Amended, and Restated Declaration of Condominium for Sugar Mountain Ski & Country Club is located at Sugar Mountain, Banner Elk Township, Avery County, North Carolina and more particularly described as follows:

TRACT ONE

All that certain parcel or tract of land (including the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto) containing 7.274 acres, 0.748 acres and 1.792 acres as the same are shown and more particularly described on Plat No. 81004-3 entitled "Survey for Phase No. I, No. IIA, and No. IIB Sugar Mountain Ski & Country Club" dated May 18, 1983, revised April 20, 1984 and revised September 11, 1984, and prepared by David K. Stern, RLS No. L-1301 and recorded in Condominium Book 4, Page 11, and Condominium Book 5, Page 12, Avery County, North Carolina, Public Registry and being the same 7.274 acre tract, 0.748 acre Phase IIA tract and 1.792 acres Phase IIB tract being a portion of the 5.289 acre tract designated as R-2 as shown on Plat No. 81004-2 entitled "Division Survey for Resort Investment Corporation" dated October 1, 1982, revised May 18, 1983 and prepared by David K. Stern, RLS No. L-1301 and recorded in Plat Book 19, Page 9, Avery County, North Carolina, Public Registry, TOGETHER WITH: (a) a 60-foot wide privately maintained nonexclusive right-of-way and easement for ingress, egress and regress for a roadway and for utilities, in common with Resort Investment Corporation, Declarant herein, its successors and assigns, as the same is shown on the plats recorded in Condominium Book 4, Page 11, Condominium Book 5, Page 12, and Plat 19, Page 9, Avery County, North Carolina, Public Registry and referenced above, subject to the rights in said easement conveyed to William H. Cannon, Trustee for Sugar Mountain Irrevocable Trust recorded in Book 137, Page 0279, Avery County, North Carolina, Public Registry, and reserved unto said William H. Cannon, Trustee in Book 137, Page 0273, Avery County, North Carolina, Public Registry; (b) all easements, rights-of-way and rights of use, in common with Resort Investment Corporation, Declarant herein, its successors and assigns, as shown on said plats and as otherwise recorded in the Avery County, North Carolina, Public Registry, including those easements conveyed in the Deed recorded in Book 137, Page 0273, Avery County, North Carolina, Public Registry; (c) all rights granted to the Association by Article XIV of this Declaration; RESERVING, HOWEVER, unto Resort Investment Corporation, Declarant herein, its successors and assigns: (a) the 60-foot wide privately maintained nonexclusive right-of-way and easements set forth in (a) above; (b) a 40-foot wide privately maintained nonexclusive right-of-way and easement for ingress, egress and regress for a roadway, for vehicular parking on the shoulders of said roadway and for utilities located or to be located along a portion of the southern and eastern boundaries of the 7.274 acres tract described above, as the said 40-foot wide nonexclusive right-of-way and easement is more particularly shown on the plat recorded in Plat Book 19, Page 9 of the Avery County, North Carolina, Public Registry as referenced above; (c) a 50-foot wide privately maintained nonexclusive right-of-way and easement for ingress, egress and regress for a roadway, for vehicular parking and for utilities located or to be located within said right-of-way and easement, located or to be located within said right-of-way and easement, the same being located along the southern portion of the 0.619 acre tract as shown on the plat recorded in Condominium Book 4, Page 11, Avery County, North Carolina, Public Registry; (d) a 40-foot wide privately maintained non-exclusive right-of-way, for easement for ingress, egress and regress for a roadway, for vehicular parking and for utilities located or to be located within said right-of-way and easements, the same being located through the 1.792 acre tract described above and shown on the Plat record in

Condominium Book 5, Page 12, Avery County, North Carolina, Public Registry; (e) easements for ingress an egress, for pedestrian and vehicular purposes and for utilities services and drains which now exist or are hereafter granted, created or established by the Declarant herein, its successors and assigns, for the benefit of such persons as the Declarant, its successors or assigns, designate as set forth with more particularly in Article XIV and otherwise of this Declaration and the Exhibits thereto; (e) all rights reserved by the Declarant by the terms of this Declaration.

The aforesaid real property and the particular improvements thereon, which are hereby committed (and the location of such improvements) are shown and described in the Condominium Plat and Plans which are recorded herewith as described above and which are incorporated in this description by reference and which constitute, together with this description, Exhibit "1" to the Declaration of Condominium of Sugar Mountain Ski & Country Club (the "Condominium"). The improvements consisting of the buildings within which Units are located and the location of individual Units within the buildings are located as shown and described upon the aforesaid parts of this Exhibit, which locations and descriptions are also incorporated in this description by reference. Each Unit has appurtenant to it an undivided interest in the common elements as shown and described in the Condominium Plat and Plans, and as described in the Declaration to which this is an Exhibit. All areas not contained within the Units as the term "Units" is defined in the aforesaid Declaration constitute common elements, improvements which constitute common elements are the streets and driveways, sidewalks, parking areas, all stairways, elevators, walkways and halls providing access to individual Units, for covered spas and the swimming pool and equipment room, lounge, restrooms, sauna, spa and board room located within the Amenity Building, water lines (to Condominium meters) and all other improvements not contained within or part of any Unit(s).

Each Unit is frame construction and includes:

- (a) The space enclosed by the unfinished surfaces of perimeter and interior walls, ceilings and floors thereof, including vents, doors, windows and such other structural elements that are ordinarily regarded as enclosures of space.
- (b) All interior dividing walls and partitions (including the space occupied by such walls and partitions).
- (c) The decorated interior surfaces of all interior walls (including the decorated surfaces of all interior load-bearing walls) and floors, ceilings, consisting as the case may be of wallpaper, paint, plaster carpeting, tiles and all other furnishings, materials and fixtures affixed or installed and for the sole and exclusive use of any dwelling space, commencing at the point of disconnection of the structural body of the building and from utility lines, pipes or systems serving the dwelling space. No pipes, wires, conduits or other public utility lines or installation constituting a part of the overall system designed for the service of any particular dwelling space of a building or any property of any kind, including fixtures and appliances within a Unit, which are not removable without jeopardizing the safety or usefulness of the remainder of the building shall be deemed to be part of any Unit.

The condominium as presently constituted, consists of nine (9) buildings, with buildings numbered 1-6, 8, and 10 located and configured as shown in Exhibit 1 to First Amendment to Declaration of Condominium for Sugar Mountain Ski and Country Club recorded in Book 153, Page 323 of the Avery County Registry ("First Amendment to Declaration") and with building number 11 located and configured as shown in Exhibit 1 to Second Amendment to Declaration of Condominium for Sugar Mountain Ski and Country Club recorded in Book 157, Page 757 of the Avery County Registry ("Second Amendment to Declaration"), each three stories in height (and having no attics or basements) containing residential Units as well as other improvements, and an F Building one story in height (and having no basement or attic) and various common element improvements. All residential

Unit numbers for residential Units in Building 1 contain the number prefix "1". Likewise , all residential Unit numbers for residential Units in Building 2 contain the prefix "2", etc. there are fifteen (15) one bedroom Units and one hundred eight (108) two bedroom Units and two (2) Commercial Units contained in Phase I (as recorded in the original Declaration); there are sixteen (16) Efficiency Units and eight (8) Efficiency with Loft Units contained in Building 10, Phase IIA; and there are sixteen (16) Efficiency Units and eight (8) Efficiency with Loft Units contained in Building 11, Phase IIB.

Units numbered 111-115 are each identical and are each a one bedroom Unit contained approximately 513 square feet on one floor consisting of four rooms and a balcony and are each located on the first floor of Building 1. The floor plan and dimensions of the one bedroom Units shown in exhibits to the First Amendment to Declaration are incorporated herein by reference. As to each one bedroom Unit, entrance is made through a corridor which is part of the common elements into the Unit. Entrance to the interior of the Unit is made into a hallway which leads into a great room area. Entrance is made off of the hallway into the bedroom, into a utility closet, and into the bath of the Unit. Each bedroom contains a closet. Sliding doors from the great room area provide access to the balcony which is part of the Unit. The balcony consists of approximately 61 square feet on all one bedroom Units.

Units numbered 121-125 are identical to Unit 111 except that each such Unit is located on the second floor of Building 1, entrance being made into each such Unit from the common element corridor, access being gained to said corridor by stairway and elevator which are part of the common elements.

Units numbered 131-135 are identical to Unit 111 except that each such Unit is located on the second floor of Building 1, entrance being made into each such Unit from the common element corridor, access being gained to said corridor by stairway and elevator which are part of the common elements.

Units numbered 211-216, 311-316, 411-416, 511-516, 611-616, and 811-816 are each identical and are each a two bedroom Unit containing approximately 904 square feet on one floor consisting of six rooms and a balcony and are located on the first floor of Buildings 2, 3, 4, 5, 6, and 8 respectively. The floor plan and dimensions of the two bedroom Units shown in exhibits to the First Amendment to Declaration are incorporated herein by reference. As to each such Unit, entrance is made from the common element corridor into a hallway in the Unit which leads to the great room area. The hall provides access into the guest bath and the two bedrooms of the Unit, as well as the utility closet and in addition, the master bedroom of the Unit contains a closet and in addition, the master bedroom also accesses the second bath of the Unit. Sliding glass doors from the great room area provide access to the balcony which is part of the Unit. (Note that the interior layouts of some units have been altered, but the square footage has not changed.)

Notwithstanding anything to the contrary, the balcony for each first floor Unit consists of approximately 115 square feet giving those Units a total square footage of 1019 square feet; the balcony for each second floor Unit consists of approximately 67 square feet, giving those Units a total square footage of 971 square feet; and the balcony for each third floor Unit consists of approximately 75 square feet, giving those Units a total square footage of 979 square feet.

Units numbered 221-226, 321-326, 421-426, 521-526, 621-626, and 821-826 are each identical to Unit 211 except that each such Unit is located on the second floor of Buildings 2, 3, 4, 5, 6, and 8 respectively, entrance being made into each such Unit from the stairways and elevator which are also part of the common elements.

Units numbered 231-236, 331-336, 431-436, 531-536, 631-636, 731-736 and 831-836 are each identical to Unit 211 except that each such Unit is located on the second floor of Buildings 2, 3, 4, 5, 6, and 8 respectively, entrance being made into each such Unit from the stairways and elevator which are also part of the common elements.

Units numbered 10-101, 10-201, 10-301, 10-401, 10-501, 10-601, 10-701, and 10-801 are studio Units (“Efficiency Units”) containing square footage set forth in the Condominium Plat and Plans, each on one floor, consisting of three rooms and a balcony. The floor plan and dimensions of the Efficiency Units shown in exhibits to the First Amendment to Declaration are incorporated herein by reference. As to each Efficiency Unit, entrance is made through a corridor which is part of the Common Elements into the Unit. Entrance to the interior of the Unit is made into a hallway which leads into a great room area containing living area and a sleeping alcove. Entrance is made off of the hallway into the ski storage area, utility closet and clothes closet. Access to the kitchen and bath is from the hallway or great room, depending on the Unit, reference being made to the Condominium Plats and Plans. Sliding doors from the great room area provided access to the balcony which is part of the Unit. The square footage area of the balcony is set forth in the Condominium Plats and Plans.

Units numbered 10-102, 10-202, 10-302, 10-402, 10-502, 10-602, 10-702, and 10-802 are identical to the Efficiency Units on the first floor except that each such unit is located on the second floor of Building 10, entrance being made into each such Unit from the Common Element corridor, access being gained to said corridor by stairway which is part of the Common Elements.

Units numbered 10-103, 10-203, 10-303, 10-403, 10-503, 10-603, 10-703, and 10-803 are Efficiency with Loft Units. These Units contain the square footage set forth in the Condominium Plat and Plans on one floor in addition to a loft area, have four rooms and a balcony, and are located on the third floor of Building 10. The floor plan and dimensions of each Efficiency with Loft Unit shown in exhibits to the First Amendment to Declaration are incorporated herein by reference. As to each such Unit, entrance is made from the Common Element corridor into a hallway in the Unit which leads to the great room area. The hall or great room area, depending on the Unit, provides access into the bath and the kitchen. A ski storage area, utility closet, clothes closet and staircase providing access to the Loft are also accessed from the hallway or great room, depending on the Unit. Sliding glass doors from the great room area provided access to the balcony which is part of the Unit.

Units numbered 11-101, 11-201, 11-301, 11-401, 11-501, 11-601, 11-701, and 11-801 are studio Units (“Efficiency Units”) containing square footage set forth in the Condominium Plat and Plans, each on one floor, consisting of three rooms and a balcony and are located on the first floor of Building 11. The floor plan and dimensions of the Efficiency Units shown in exhibits to the Second Amendment to Declaration are incorporated herein by reference. As to each Efficiency Unit, entrance is made through a corridor which is part of the Common Elements into the Unit. Entrance to the interior of the Unit is made into a hallway which leads into a great room area containing living area and a sleeping alcove. Entrance is made off of the hallway into the ski storage area, utility closet and clothes closet. Access to the kitchen and bath is from the hallway or great room. Sliding doors from the great room area provided access to the balcony which is part of the Unit. The square footage area of the balcony is set forth in the Condominium Plats and Plans.

Units numbered 11-102, 11-202, 11-302, 11-402, 11-502, 11-602, 11-702, and 11-802 are identical to the Efficiency Units on the first floor except that each such unit is located on the second floor of Building 11, entrance being made into each such Unit from the Common Element corridor, access being gained to said corridor by stairway which is part of the Common Elements.

Units numbered 11-103, 11-203, 11-303, 11-403, 11-503, 11-603, 11-703, and 11-803 are Efficiency with Loft Units. These Units contain the square footage set forth in the Condominium Plat and Plans on one floor in addition to a loft area, have four rooms and a balcony, and are located on the third floor of Building 11. The floor plan and dimensions of the Efficiency with Loft Units shown in exhibits to the Second Amendment to Declaration are incorporated herein by reference. As to each such Unit, entrance is made from the Common Element corridor into a hallway in the Unit which leads to the great room area. The hall or great room area, depending on the Unit, provides access into the bath and the kitchen. A ski storage area, utility closet, clothes closet and staircase providing access to the loft are also accessed from the hallway or great room, depending on the Unit. Sliding glass doors from the great room area provided access to the balcony which is part of the Unit.

The limited Common Areas appurtenant to Unit A are located on the second floor of Buildings 10 and 11 and are accessed from the Common Element corridor on that floor.

The Amenity Building is located and configured as shown in Exhibit 1 to the First Amended Declaration incorporated herein by reference, except as altered in 2005 by the addition and floor plan alterations reflected in Attachment 1 to this Exhibit. The Amenity Building currently consists of approximately 5,112 square feet and contains a lobby, office, reception area, men's and women's restrooms, lounge, indoor swimming pool, spa and pool equipment room. The swimming pool, spa and pool equipment room are located in the domed enclosure consisting of approximately 2,450 square feet. Four enclosed spas located on the property were modified as follows: two have been converted to enclosed recreational gazebos; one has been converted to a laundry facility and one was removed due to disrepair.

TRACT TWO

All that certain parcel or tract of land (including all improvements and all easements, rights and appurtenances belonging thereto) containing 0.619 acre as the same is described on a survey dated May 18, 1983 entitled Sugar Mountain Ski and Country Club prepared by David K. Stern, RLS #L-130, surveyor's map #81004-3, and recorded in Condominium Book 5 Page 12, Avery County, North Carolina, Public Registry, and being the same tract identified as "Tract Two" in a document recorded in Deed Book 187, Page 872, Avery County, North Carolina, Public Registry and therein described as follows:

Beginning at the southwestern corner of Lot 287, Grouse Forest Subdivision, Sugar Mountain Resort, Village of Sugar Mountain, Banner Elk Township, Avery County, North Carolina (as shown on a plat recorded in Plat Book 5, Page 66, Register of Deeds for Avery County, North Carolina); thence North 73 degrees 56 minutes West 426.38 feet to a point; thence North 73 degrees 56 minutes West 272.63 feet to a point; thence South 82 degrees 40 minutes West 288.59 feet to the point of beginning; thence from the beginning South 82 degrees 40 minutes West 80.00 feet to an iron pin; thence North 09 degrees 00 minutes West 38.67 feet to a point; thence with the arc of a circle curving to the left a radius of 75 feet and a chord bearing of North 28 degrees 48 minutes West an arc distance of 51.85 feet to a point; thence North 48 degrees 37 minutes West 125.59 feet to a point; thence with the arc of a circle curving to the right a radius of 25 feet and a chord bearing of 00 degrees 24 minutes East an arc distance of 42.76 feet to a point; thence North 49 degrees 24 minutes East 15.96 feet to a point; thence with the arc of a circle curving to the right a radius of 45 feet and a chord bearing of North 80 degrees 33 minutes East an arc distance of 48.93 feet to a point; thence South 68 degrees 18 minutes East 84.90 feet to a point; thence with the arc of a circle curving to the left a radius of 260 feet and a chord bearing of South 76 degrees 15 minutes East an arc distance of 72.08 feet to a point; thence South 05 degrees 49 minutes West 103.87 feet to a point; thence South 07 degrees 20 minutes East 60.00 feet to the point of BEGINNING.

**EXHIBIT 2 TO
SUPPLEMENTAL, AMENDED, AND RESTATED
DECLARATION OF CONDOMINIUM
SUGAR MOUNTAIN SKI AND COUNTRY CLUB**

**PROPERTY RIGHTS AND PERCENTAGE OF INTEREST
SUGAR MOUNTAIN SKI AND COUNTRY CLUB
A CONDOMINIUM**

Each Unit Owner owns, in addition to his Unit, an interest in the Common Elements of the Property, which percentage ownership has been determined and computed by taking as a basis the fair market value of each individual Unit in relation to the value of all Units in the Condominium as constituted. The Condominium as presently constituted, consists of fifteen (15) one bedroom Units, one hundred eight (108) two bedroom Units, thirty-two (32) Efficiency Units, and sixteen (16) Efficiency with Loft Units.

Each one bedroom Unit has an equal value to every other such Unit. As the Condominium is presently constituted, there is appurtenant to each one bedroom Unit an undivided .455 percent ownership in the Common Elements of the Property and share in the Common Expenses and Assessments and Common Profits of the Condominium.

As the Condominium is presently constituted, there is appurtenant to each two bedroom Unit an undivided .714 percent ownership in the Common Elements of the Property and share in the Common Expenses and Assessments and Common Profit of the Condominium.

As the Condominium is presently constituted, there is appurtenant to each Efficiency Unit an undivided .262 percent ownership in the Common Elements of the Property and share in the Common Expenses and Assessments and Common Profit of the Condominium.

As the Condominium is presently constituted, there is appurtenant to each Efficiency with Loft Unit an undivided .455 percent ownership in the Common Elements of the Property and share in the Common Expenses and Assessments and Common Profit of the Condominium.

As the Condominium was constituted, there is appurtenant to Commercial Unit A an undivided .232 percent ownership in the Common Elements of the Property and share in Common Expenses and Assessments and Common Profit of the Condominium.

As the Condominium was presently constituted, there is appurtenant to Commercial Unit B an undivided .231 percent ownership in the Common Elements of the Property and share in Common Expenses and Assessments and Common Profit of the Condominium.

The absence of former Units A's and B's combined 0.463% interest in the common elements is treated as within the rounding error so that the commercial units' absence from the revenue stream will not inappropriately reduce the per-unit contributions of the owners of all remaining units.

EXHIBIT 3 TO
SUPPLEMENTAL, AMENDED, AND RESTATED
DECLARATION OF CONDOMINIUM
SUGAR MOUNTAIN SKI AND COUNTRY CLUB

BYLAWS
OF
SUGAR MOUNTAIN SKI AND COUNTRY CLUB CONDOMINIUM ASSOCIATION, INC.
A NON-PROFIT CORPORATION

ARTICLES 1 - PURPOSE, APPLICABILITY, OFFICES

- Section 1.1 IDENTITY. These are the Bylaws of SUGAR MOUNTAIN SKI AND COUNTRY CLUB CONDOMINIUM ASSOCIATION, INC., a North Carolina nonprofit corporation, (the "Association"), the Articles of Incorporation (the "Articles") of which have been filed in the office of the North Carolina Secretary of State.
- Section 1.2 PURPOSE. This Corporation (hereinafter called the "Association") has been organized to provide for the administration, management, maintenance and care of Sugar Mountain Ski and Country Club Condominium (the "Condominium"), a condominium established and operated in accordance with the North Carolina Unit Ownership Act and, to the degree applicable, the North Condominium Act upon the property situate, lying and being in Avery County, North Carolina and more particularly described in the Exhibits to the Declaration of Condominium (the "Declaration") and incorporated herein by reference.
- Section 1.3 APPLICABILITY OF BYLAWS. The provisions of these Bylaws are applicable to the Condominium and to the use and occupancy thereof. All present and future Owners, Mortgagees, lessees and occupants of Units and their families and guests, and any other persons who may use or occupy the facilities of the Condominium in any manner, are subject to the Declaration, these Bylaws and rules and regulations made pursuant hereto and any amendment to these Bylaws upon the same being passed and duly set forth in an amendment to the Declaration, duly recorded. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws (and any Rules and Regulations made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.
- Section 1.4 PRINCIPAL OFFICE. The principal office of the Association shall be located in Avery County, North Carolina.
- Section 1.5 REGISTERED OFFICE. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.
- Section 1.6 DEFINITIONS. All terms as defined in the Declaration, the North Carolina Unit Ownership Act, or the North Carolina Condominium Act (to the degree applicable) shall have the same meaning herein except when the context otherwise specifies or requires.

ARTICLE II - QUALIFICATION AND RESPONSIBILITIES OF MEMBERS

- Section 2.1 MEMBERS. Each Unit Owner shall be a member of the Association, and shall remain a member until he or she ceases to be a Unit Owner.
- Section 2.2 MORE THAN ONE OWNER. When there is more than one Unit Owner of a Unit, all such persons shall be members of the Association.

Section 2.3 REGISTRATION. It shall be the duty of each Unit Owner to register his or her name and the number of his or her Unit with the Secretary of the Association, as well as mailing address other than unit address and email address, if any. If a Unit Owner does not so register, the Association shall be under no obligation to recognize his or her individual membership and may instead rely upon the last known address of the owners of the Unit as the record address.

Section 2.4 PROHIBITION OF ASSIGNMENT. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his or her Unit.

ARTICLE III - MEMBERS' MEETINGS AND VOTING

Section 3.1 PLACE OF MEETINGS. All meetings of the Unit Owners shall be held at the Condominium or at such other place either within or without the State of North Carolina as shall be designated in a notice of the meeting.

Section 3.2 ANNUAL MEETING. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

Section 3.3 SPECIAL MEETINGS. Special meetings of the members may be called at any time by the President, a majority of the Board, or upon written request of Unit Owners having twenty percent (20%) of the total votes in the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

Section 3.4 NOTICES. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof (including the general nature of any proposed amendment to the Declaration or these Bylaws, and budget changes, and any proposal to remove an officer or director), shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner, not less than twenty (20) nor more than fifty (50) days in advance of any meeting. 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 or bylaws, any budget changes, and any proposal to remove a director or officer. to the members at the addresses that any member may have designated to the President or Secretary, at least twenty-one (21) days in advance of any annual or regularly scheduled meeting and at least seven (7) days in advance of any other meeting.

Section 3.5 QUORUM, ADJOURNMENT IF NO QUORUM. A quorum shall consist of members present at the beginning of the meeting, in person or by proxy, entitled to cast at least twenty-five percent (25%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

Section 3.6 VOTES; ASSOCIATION SHALL NOT VOTE. The total votes in the Association are allocated to Units by the Declaration. The votes allocated to a Unit may be cast by the Unit Owner of that Unit or, when there is more than one Unit Owner of a Unit, by any one of the Unit Owners of that Unit consistent with Section 3.7 below. The votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the

multiple Owners. Majority agreement shall be conclusively presumed if any one of the multiple Owners casts the votes allocated to the Unit without protest being made promptly in person or through a duly executed proxy to the person presiding over the meeting by a majority of the other Owners of the Unit. The Association shall not be entitled to cast the votes allocated to any Unit owned by it.

Section 3.7 MANNER OF CASTING VOTES. Votes may be cast in person, by written ballot circulated to the membership in advance of any meeting and stating the proposed action upon which each vote is to be taken, or by a proxy duly executed by a Unit Owner. A proxy is void if not dated and terminates one year after its date, unless it specifies a shorter term. A Unit Owner may not revoke a proxy except by written notice of revocation delivered to the person presiding over a meeting of the Association.

Section 3.8 REQUIRED VOTES. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these bylaws require a greater vote.

Section 3.9 ACTION BY MEMBERS WITHOUT MEETING. Any action that may be taken at a meeting of the members may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

ARTICLE IV - DIRECTORS

Section 4.1 NUMBER. The business and property of the Association shall be managed and directed by a Board of Directors composed of five (5) natural persons.

Section 4.2 ELECTION, TERM AND QUALIFICATION. Except as provided in the Declaration and in this Article with respect to the Director appointed and removed by Declarant during the period of Declarant Control, the five (5) members of the permanent Board of Directors shall be elected at an annual meeting of Unit Owners and those persons who receive the highest number of votes (whether or not a majority or Plurality) shall be deemed to have been elected. The size of the permanent Board of Directors may be increased or decreased from time to time upon the affirmative vote of Unit Owners owning in the aggregate at least sixty-six and two-thirds percent (66-2/3%) of the total votes in the Association, provided that said Board shall not be less than three (3) in number nor greater than seven (7) in number. Each Director shall hold office for a term of two (2) years or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualifies.

All applicants for election to the Board of Directors (hereinafter referred to as Board applicants) must be members in good standing and current in payment of all Association assessments and fees. Applicants must submit their name and completed application 30 days prior to the annual meeting. A slate of eligible Board applicants; along with applications and/or attached resumes, will be distributed to all members not later than 20 days prior to the annual meeting. The Board of Directors shall be elected solely from this slate unless an insufficient number of eligible applicants have applied to fill vacant Board positions; in such an event, nominations may be taken from the floor at the annual meeting. In case of questions of eligibility, a majority vote of the Board shall determine eligibility subject to override by a majority vote of eligible voting members.

Section 4.3 REMOVAL. A director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-six and two-thirds percent (66-2/3%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the

balance of the removed Director's term. Any Director missing more than one regular Board meeting per year or who fails to continue to meet the eligibility requirements for Board membership may be removed by a majority vote of the other Directors.

- Section 4.4 VACANCIES. Any vacancy in the Board arising by death, resignation or removal of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.
- Section 4.5 REGULAR MEETINGS. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, email, or facsimile transmission at least seventy-two (72) hours prior to the meeting.
- Section 4.6 SPECIAL MEETINGS. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) Directors is delivered to any other director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, email, or facsimile transmission to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.
- Section 4.7 QUORUM; ADJOURNMENT IF NO QUORUM. A majority of the Board at the beginning of the meeting shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The officer chairing the meeting shall determine the presence of a quorum, which shall be duly noted in the minute for the meeting.
- Section 4.8 MANNER OF ACTING. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or the Bylaws.
- Section 4.9 BOARD ACTION WITHOUT MEETING. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.
- Section 4.10 COMPENSATION. The Board of Directors shall receive no compensation for their services unless expressly allowed by the Board at the direction of the Unit Owners having sixty-six and two-thirds percent (66-2/3%) of the total votes entitled to vote at an election of Directors.
- Section 4.11 POWERS AND DUTIES OF BOARD. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a report containing at least the following:

(i) A statement of any capital expenditure in excess of five percent (5%) of the current budget or Five Hundred Dollars (\$500.00),

whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the Association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments in which the Association is party.

(v) A statement of the insurance coverage provided by the Association.

(vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.

(b) To adopt and amend budgets for revenues, expenditures and reserves and to determine, and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain, repair, replace and improve the Common Elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each Unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a Unit without the approval of the Unit Owner.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself on matters affecting the Condominium.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement, modification or improvement of Common Elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(k) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements and other portions of the Common Elements which provide access to the Units and for services provided to Unit Owners.

(l) To grant leases, licenses, concessions and easements through and over the common elements.

(m) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates, or statements of unpaid assessments.

(n) To provide for indemnification of the Association's officers and directors and maintain officers' and Directors liability insurance.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

ARTICLE V - OFFICERS

Section 5.1 DESIGNATION OF OFFICERS. The officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. Each of the above-named officers shall be Director. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect additional officers, including an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. Each such additional officer must be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

Section 5.2 ELECTION OF OFFICERS. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration.

Section 5.3 TERM. Each officer shall serve until his or her successor has been duly elected and has qualified.

Section 5.4 REMOVAL. Any officer may be removed, with or without cause, and without notice, by the Board.

Section 5.5 VACANCY. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

Section 5.6 POWERS AND DUTIES OF OFFICERS.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice-President. The Vice-President shall perform such duties of the President as shall be assigned to him or her by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall ensure the safekeeping and accuracy of the books of the Association in accordance with good accounting practices and principles, and, upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all money and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation. He or she shall keep full and accurate accounts of the finances of the Association in books especially provided for the purpose. He or she shall cause a true statement of its assets and liabilities as of the results of its operations and of changes in surplus for each fiscal year, all in reasonable detail, to be prepared and distributed to all Unit Owners and members of the Board of Directors within ninety (90) days following the end of each fiscal year. The statement shall be kept available for inspection by any Unit Owner for a period of three (3) years.

Section 5.7 EXECUTION OF AGREEMENTS, ETC. All agreements, deeds, mortgages, or other instruments shall be executed either by any two (2) officers, or by the President or Vice President pursuant to a resolution approved by the majority of the Board of Directors, or by such other person or persons as may be designated by the Board or by law.

Section 5.8 COMPENSATION OF OFFICERS RESTRICTED. No officer shall be compensated for his or her services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his or her duties.

ARTICLE VI - LIABILITY OF DIRECTORS, OFFICERS, AND OTHERS

Section 6.1 LIABILITY OF THE DIRECTORS AND OFFICERS. The Officers of the Association and members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith.

It is intended that the Directors and Officers shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are obligated as Unit Owner(s). It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the Officers and Board members shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board on behalf of the Association shall provide that the members of the Board of Directors, or the managing agent, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability as his or her interest in the Common Elements bears to the interest of all Unit Owners in the Common Elements.

Section 6.2 INDEMNIFICATION. The Unit Owners shall indemnify and hold harmless each of the Directors and Officers against all contractual liability to others arising out of their actions or decisions or contracts made by the Board on behalf of the Association unless any such action, decision or contract shall have been in bad faith or in willful violation of the provisions of the Unit Ownership Act, the Condominium Act (to the degree applicable), the Declaration, or these Bylaws.

The Association shall indemnify any Director or Officer or former Director or Officer of the Association or any employee or agent acting under the authority

of any Director or Officer against expenses (including attorney's fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding in which he is made a part by reason of being or having been such Director, Officer, employee or agent except in relation to matters as to which he shall be adjudged in such action, suit or proceedings to be liable for willful misconduct in the performance of duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a Director, Officer, employee or agent of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article VI, or elsewhere in these Bylaws, shall operate to indemnify any Director or Officer if such indemnification is for any reason contrary to any applicable state or federal law.

ARTICLE VII - FISCAL MANAGEMENT

- Section 7.1 DEPOSITORY. The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by any one (1) officer of the Association, or any other person(s) authorized by the Board.
- Section 7.2 FIDELITY BONDS. Fidelity bonds may be maintained by the Association, in an amount determined by the Board, covering each directors and officer of the Association, any employee or agent of the Association and any other person, handling or responsible for handling funds of the Association.
- Section 7.3 PAYMENT VOUCHERS. Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.
- Section 7.4 FISCAL YEAR. The fiscal year of the Association shall be July 1 of any given year through June 30th of the following calendar year, provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

ARTICLE VIII - ASSESSMENTS

- Section 8.1 OBLIGATION OF MEMBERS TO PAY ASSESSMENTS; AMOUNT OF LEVY. Each Unit Owner shall be personally and severally liable for the Common Expenses that are levied against his or her Unit while a Unit Owner. Each Unit shall be assessed in accordance with that Unit's percentage of Common Expenses as allocated by the Declaration, as amended.
- Section 8.2 ALLOCATION OF COMMON SURPLUS. Any common surplus not allocated to an account or common purpose authorized hereunder may be allocated to each Unit in accordance with its percentage of Common Expenses, and, if so allocated, shall be owned by the Unit Owner of that unit, and, if allocated, may be paid to the Unit Owner or credited against that Unit's share of Common Expenses subsequently assessed.
- Section 8.3 LIEN FOR ASSESSMENTS. Every assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that unit when filed of record in the office of the Clerk of Superior Court of Avery County in the manner provided therefor by Article 8 of Chapter 44 of the General Statutes. The lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court of Avery County, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit.
- Section 8.4 PAYMENT OF ASSESSMENTS. Assessments shall be payable on the date specified in the notice and shall be delinquent if not paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct.
- Section 8.5 FUNDS AND RESERVES. All sums collected by the Association from assessments shall be accounted for as follows:
- (a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other Common Elements, of the Condominium.
 - (b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during periods of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.
 - (c) Operating Fund. To this fund shall be credited collections of assessments for all Common Expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.
 - (d) Working Capital Fund. All funds, if any, received by the Association for the initial working capital fund of the Association, to defray unforeseen expenses and/or the cost of additional equipment or services deemed necessary or desirable by the Board, shall be maintained in and segregated in this fund for the use and benefit of the Association.

The reserve fund for repairs and replacements shall be established by the Board and whenever reasonably possible shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve fund describe above shall be maintained only in such amounts as deemed

necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

Section 8.6 SPECIAL ASSESSMENTS. In addition to the assessments levied pursuant to Section 8.3., the Board, in its discretion, may levy special assessments at such other and additional times as in its judgments are required for:

(a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.

(b) Alterations, improvements, and additions to the Common Elements; provided, however, that any such special assessment not primarily for the purpose of necessary maintenance or repairs and involving an expenditure in excess of Ten Thousand and 00/100 Dollars (\$10,000.00) shall be first approved by the members entitled to cast at least fifty-one percent (51%) of the total votes in the Association at a regular or special meeting of the Association. [JAT Item for consideration].

(c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 10.1 and 10.3 hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

Section 8.7 COMMON EXPENSES ASSOCIATED WITH LIMITED COMMON ELEMENTS OR BENEFITING LESS THAN ALL UNITS.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any item of Common Expenses benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

Section 8.8 FAILURE TO PREPARE BUDGET AND LEVY ANNUAL ASSESSMENT; DEFICIENCIES IN PROCEDURE. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3 each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

Section 8.9 ASSESSMENT ROLL; CERTIFICATE. The payment status of all assessments shall be set forth upon a roll of the Units, which shall be available from the Treasurer or the managing agent for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his or her Unit. The certificate shall be furnished within seven (7) business days after receipt of the

request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

Section 8.10

DEFAULT AND ENFORCEMENT. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessment shall have the same priority as the assessment to which they relate and are enforceable as assessments.

If any action is taken by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rent for the use of the Unit during the period of redemption from such foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid. The Board may also suspend voting rights and repairs to the Unit.

Section 8.11

INTEREST ON DELINQUENT ASSESSMENTS. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

Section 8.12

COMMON EXPENSES. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the property until the Units are separately assessed; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.12(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interest, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

It is also understood that utilities (including without limitation water, sewer, electricity and natural gas) which may be provided to the Condominium through a single or common meter or facility and utilities furnished to any

portion of the Common Elements shall be paid by the Board as a Common Expense and must be assessed either equally per unit where the benefit conferred is approximately equal per unit or else in proportion to ownership of the Common Elements.

ARTICLE IX - RELOCATION AND ALTERATION OF UNITS

- Section 9.1 PROCEDURE. Consistent with the requirements of G.S. §47A-11, if any Unit Owner desires to (i) relocate the boundaries of his Unit pursuant to Section 47C-2-112 of the Act, (ii) remove partitions or create apertures pursuant to Section 47C-2-111 of the Act, or (iii) make any improvements or alterations to his Unit which impair the structural integrity or mechanical systems of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed.
- Section 9.2 NOTICE TO AND CONSENT OF BOARD. Prior to doing any work of the kind set out in Section 9.1, the Unit Owner shall give notice to the Board of his or her intent to do such work and request and receive the written consent thereto of the Board or, on appeal, the Association. With such notice shall be given (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work prepared by an architect licensed under the provisions of Chapter 83 of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes, and (iii) such additional information relative to the proposed work as the Board may reasonably request, including such testimony and evidence as it deems appropriate, and shall decide whether to consent or not to consent to such work. Written notice of such decision shall be given to said Unit Owner.
- Section 9.3 APPEAL TO ASSOCIATION. The Unit Owner proposing to do the work may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.
- Section 9.4 MEETING AND DECISION OF ASSOCIATION. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from time to time by the chairman. The provisions of Article III hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.
- Section 9.5 FEES. The Board may require the Unit Owner proposing to do the work to pay reasonable fees and charges to cover the costs to be incurred by the Association in giving notice of and holding meetings pursuant to this Article.
- Section 9.6 CONDITIONS. The Board or, on appeal, the Association, may impose conditions on any consent to such work to protect the Common Elements, Units and the Condominium, and to insure that the provisions of the Act, Declaration and these Bylaws are complied with, including, without limitation, the furnishing to the Association of payment and performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor and all costs thereof paid.
- Section 9.7 CONTROLLING PROCEDURE. The procedure set out in this Article shall control over any contrary provisions in the Act.

ARTICLE X - COMPLIANCE, ENFORCEMENT
FINES AND PENALTIES

- Section 10.1 DEFAULT AND REMEDIES. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Unit Owner, or any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his or her Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to vote as a member of the Association until the default is cured.
- Section 10.2 NOTICE OF DEFAULT AND FAILURE TO CURE. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deem necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.
- Section 10.3 REMEDY OF ABATEMENT IN ADDITION TO OTHER REMEDIES. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 10.2. hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Unit in which, on which, or as to which, such default exists, and summarily to

abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in section 10.1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

- Section 10.4 INJUNCTION. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2. hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.
- Section 10.5 RECOVERY OF ATTORNEYS' FEES AND COSTS. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred until paid.
- Section 10.6 NONWAIVER OF COVENANTS. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.
- Section 10.7 ASSESSMENT LIENS. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article X.

ARTICLE XI - AMENDMENT

An amendment to these Bylaws shall be made and approved in the manner, and shall be subject to the same restrictions relative to requiring prior written consent of First Mortgagees, as set forth in the Declaration, and once made, shall become effective when recorded in the same manner and place as an amendment to the Declaration.

ARTICLE XII - GENERAL PROVISION

Section 12.1 RULES AND REGULATIONS.

(a) By the Board. The Board may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof by Unit Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted at an annual or special meeting of the Unit Owners, by the affirmative vote of owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated. Any such act of

the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners, Occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal or nonuniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished or otherwise made available to all members. However, failure to furnish or make available, such rules or regulations shall not affect in any way their validity or enforceability.

Section 12.2 PARLIAMENTARY AUTHORITY. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, the Unit Ownership Act, the Condominium Act (to the extent applicable), or any statutes of the State of North Carolina applicable thereto. The Chairman of the meeting shall have the authority to appoint a parliamentarian.

Section 12.3 COMPLIANCE WITH THE ACT; CONFLICT; SEVERABILITY. These Bylaws are established in compliance with the Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.