

BOOK 2775

PAGES 86 - 96

Buncombe County, NC

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1 of 11 pages

Otto W. DeBruhl, Register of Deeds

**SUPPLEMENTARY DECLARATION
TO THE PINNACLE PHASE 3**

clients/TheViewsofAsheville,LLC/Supp.Dec.V2.1

Prepared by Steven I. Goldstein

This Supplementary Declaration to The Pinnacle Phase 3 is made as of this *16* day of April 2002, by and among The Views of Asheville, LLC, a North Carolina limited liability company, hereinafter called “Declarant”, and all future purchasers and owners of Lots within that subdivision to be known as The Views of Asheville, as hereafter described.

Whereas, a Declaration of Covenants, Conditions and Restrictions for The Pinnacle Phase 3 is recorded in Buncombe County Book 2023 at page 603 (the ‘Original Declaration’), which makes reference to the plat recorded in Buncombe County Plat Book 66 at page 78 (the “Original Plat”); and

Whereas, in the deed recorded in Buncombe County Book 2657 at page 437 (the “Deed”) Declarant was conveyed all remaining unsold Subdivision property; and

Whereas, the Deed also conveyed to Declarant the rights of the Developer under the Original Declaration; and

Whereas, the Original Declaration provided for the further development of the 13.309 acre tract referred to therein into additional building lots, plus the formation of a Homeowners Association (the ‘Association’); and

Whereas, Declarant has formed the Association, and is in process of constructing additional residential structures within the Subdivision; and

Whereas, plats have been recorded in Buncombe County Plat Book 78 at page 176, Plat Book 80 at pages 9, 10, 11, 12 and 13, and may be hereafter recorded by Declarant showing some part of the said 13.309 acre tract (collectively, the “New Plats”); and

Whereas, the Original Plat and the New Plats are collectively the “Plats”, and each is a “Plat”; and

Whereas, Declarant is vested with the power and authority to amend and supplement the Original Declaration, including the incorporation of the property shown on the New Plats into the Subdivision, to record additional plats which clarify and/or modify some or all of that which is shown on the Original Plat and all previously filed New Plats, and to cause the Association to commence activities, including the assessments of all Owners of Lots which are encumbered by the Original Declaration, as the same is modified hereby.

Now, therefore, in consideration of the foregoing and for the benefit afforded to the Subdivision, it is agreed as follows:

1. Except as modified herein, the provisions of the Original Declaration remain in full force and effect. In the event of any conflict between the provisions contained herein and those in the Original Declaration, then the provisions contained herein shall control. The Original Declaration, as modified hereby, constitutes the 'Declaration'. All terms which are capitalized herein, but are not defined herein or in the attached Bylaws, shall have the same meaning as ascribed to them in the Original Declaration. The "Subdivision" includes all of the tracts shown on the Original Plat and any of the New Plats.

2. The Bylaws attached hereto constitute the Bylaws of the Association until such time as the same may be modified or amended hereafter in accordance with the provisions thereof. The Bylaws may be modified or amended hereafter without recording the amendment thereto or modification thereof.

3. Section 5 of the Original Declaration is modified and clarified to the extent that any Lot shown on the Original Plat, or shown on the New Plats, whether prior hereto or hereafter filed by or for the Declarant, is a permitted Lot; and each such Lot constitutes a permitted Lot, regardless of whether a Lot shown on a New Plat has different bounds than a Lot heretofore shown on the Original Plat, or any other Plat. The latest Lot configuration established by a New Plat filed by or for Declarant shall control.

4. Except as Declarant expressly hereafter assumes in writing, Declarant has not and does not assume any responsibilities, liabilities or obligations of the Developer, whether set forth in Section 26 of the Original Declaration, or otherwise. While Declarant may elect to maintain roadways contained within the Subdivision, it has no obligation to do so. Declarant is not obligated to anyone by virtue of the Original Declaration or the Declaration, other than those obligations which Declarant has expressly, in writing, assumed. Declarant has no obligation to pay Assessments on any Lot it owns, until such time as the Lot is sold or a completed residence on the Lot is occupied by a tenant.

5. The provisions hereof shall inure to the benefit and bind Declarant and all owners of any property within the Subdivision. This document shall be liberally construed to the full extent as permitted by law and, in order to give effect to its apparent intent.

The Views of Asheville, LLC

By: S//
Kenneth C. Jackson, Member

By: Advantage Development Co., Member

By: _____
Richard H. Green, President

By: Arvisk, LLC, Member

By: _____
Harvey H. Spiegel, Member/Manager

By: _____
Phillip B. Fisk, Member/Manager

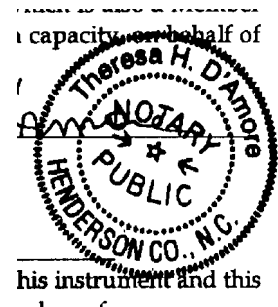
State of North Carolina - County of Buncombe

Before me, a Notary Public of said County and State on this ~ of April 2002, appeared Kenneth G. Jackson a Member of The Views of Asheville, LLC, a North in a limited liability company and "" d the foregoing document in such capacity on behalf of an of Views of Asheville, LLC. My Commission Expires: Theresa H. D'Amato

State of North Carolina .County of Buncombe

Before me, a Notary Public of said County and State on this ~day of April 2002, appeared Richard Green who confirmed that he is the President of Advantage Development (2o., a Member of The Views of Asheville, LLC, a North Carolina limited liability company and that he executed the foregoing document in such capacity on behalf of and as the act of The Views of Asheville, LLC. My Commission Expires:/~~

Before me, a Notary Public of said County and State on this ~~day of April 2002, appeared Phillip B. Fisk and Harvey H. Spiegel. who each confirmed that they are Member/Managers of Arvisk, LLC which is also a Member of The Views of Asheville, LLC and that each of them executed the foregoing document in such of and as the act of The Views of Asheville, LLC.



My Commission Expires: 4? it~ ~~~Of2

The foregoing Certificate(s) _____ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Otto W. DeBruhl Register of Deeds for Buncombe County

By 1~P44~~ ~ C e~

Deputy! ~ssistm~t .Register of Deeds

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BYLAWS OF THE VIEWS OF ASHEVILLE HOMEOWNERS ASSOCIATION, INC.

ARTICLE I Plan of Unit Ownership

Section 1: All terms defined in the Original Declaration or Supplementary Declaration to The Pinnacle Phase 3 to which these Bylaws are attached shall be deemed defined herein and shall be used without further definition. The Association is incorporated.

Section 2: The Subdivision is more particularly described in the Declaration and is located in Buncombe County, North Carolina.

Section 3: The provisions of these Bylaws are applicable to the Lots and the occupancy and use thereof.

Section 4: All Owners, tenants, future tenants, or their employees or any other person that might occupy and or use the Subdivision in any manner, are subject to the provisions of these Bylaws and to any Rules and Regulations adopted, from time to time, pursuant hereto.

Section 5: The acquisition of or rental or occupancy of any Lot shall constitute acceptance of these Bylaws, the Declaration, the Rules and Regulations and amendments thereto and an agreement to comply therewith.

ARTICLE II Voting. Majority of Owners. Quorum. Proxies

Section 1: Except as set forth hereafter, voting shall be based on Lot ownership (one vote per Lot), as provided herein and in the Declaration. Each Lot owner is an "Owner". Where a Lot is owned by more than one person or entity, such Owners shall designate, by agreement in writing filed with the Board, the person entitled to cast the vote for the Lot. Until the first to occur of (a) the sale or occupancy of nineteen Lots by Declarant, (b) five years from the recording of the Supplementary Declaration, or (c) the day Declarant releases the extra votes in writing, Declarant shall have one vote for each Lot owned by Declarant, plus thirty votes on all matters. The foregoing period is the "Declarant Control Period".

Section 2: As used in these Bylaws, the term "Majority of Owners" shall mean the affirmative vote of the Owners having the right to cast more than fifty percent of the votes, as established herein, as the same may be amended from time to time. Thus, during the Declarant Control Period, the affirmative vote of thirty one is a Majority of Owners, and after such Period it shall be sixteen, unless more than thirty Lots are then established.

Section 3: Except as otherwise provided in these Bylaws, the presence in person or by proxy of a Majority of Owners (votes) at any meeting shall constitute a quorum.

Section 4: Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary before the appointed time of any meeting.

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Section 5: Notwithstanding anything to the contrary herein, since a Majority of Owners is required for decisions, and if a deadlock should occur, any matter upon which the consent of a Majority of Owners is not initially obtained shall be resolved by mediation. If no formal mediation procedure exists, each group of Lot Owners involved in the deadlock shall appoint a mediator, each of whom shall join to agree upon a third mediator, and the majority decision of the three mediators shall be binding. Except as set forth below, mediation cost is a Common element expense. Upon mediation of the dispute, if a majority of the mediators find that one or more Owners acted unreasonably, then the Owner(s) so found shall bear all cost of the mediation and shall pay any amount required of it by the mediators in order to equitably reimburse the other Owner(s).

Section 6: In lieu of formal meetings, all actions of the Association and the Board may be taken by unanimous consent of the Association, its Board or members, as applicable, which written consent shall be filed with the books and records of the Association.

ARTICLE III Administration

Section 1: The Association will have the responsibility of administering the Subdivision, approving the annual budget, establishing and collecting monthly assessments, and arranging for the management of the Subdivision, which may be pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of a management agent Except as otherwise provided, decisions and resolutions of the Association shall require approval by a Majority of Owners. The Association shall have all powers provided for a non-profit corporation pursuant to the laws of the State of North Carolina.

Section 2: Meetings of the Association shall be held at the principal office of the Subdivision, or such other suitable place convenient to the Owners, as may be designated by the Board.

Section 3: The first annual meeting of the Association shall be held on the first day of December, 2002. Thereafter, the annual meetings of the Association shall be held on the first day of December of each succeeding year, unless this shall be a legal holiday, in which case the meeting shall be held on the next business day. At such meetings, the Board members shall be announced to the meeting by the Owners in accordance with the requirements of these Bylaws. The Owners may also transact such other business of the Association as may properly come before them.

Section 4: The Board President shall call a special meeting of the Owners if so directed by a resolution of the Board or by a petition signed by one of the Owners and presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice thereof unless by unanimous consent of Owners.

Section 5: The Board Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place where it is to be held to each Owner at least ten (10) but not more than sixty (60) days prior to such meeting. Notice shall be personally delivered or mailed, postage prepaid, to the Owner's address within the Subdivision or at such other address as an Owner shall have specified to the Association in writing. A notice mailed shall be deemed delivered the third day following mailing.

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Section 6: If any meeting of Owners does not have a quorum present, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight hours from the time the original meeting was called, notice of which shall be provided to all Owners not then present.

Section 7: The order of business at all meetings of the Owners shall be as follows, unless otherwise agreed:

- a. Roll Call
- b. Proof of Notice of Meeting or Waiver of Notice
- c. Reading of minutes of preceding meeting
- c. Section of new directors
- e. Reports of Officers
- f. Reports of Committees
- g. Unfinished business
- h. New business.

Section 8: The Association shall make available, within a reasonable time, upon reasonable request therefore, copies of the Declaration, these Bylaws, any Rules and Regulations and the books, records and financial statements thereof to Owners. The Association may charge a reasonable amount to compensate it for the copying costs.

Section 9: The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common elements, or part thereof and each Owner appoints the Association as attorney-in-fact for such purposes. In the event of a taking or acquisition of part or of all the Common elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, for the use and benefit of the Owners as required by the Declaration

ARTICLE IV Board of Directors

Section 1: The affairs of the Association shall be governed by a Board of Directors (the "Board") composed of three (3) persons. During the Declarant Control Period, Declarant shall permit one member of the Board to be elected by Owners other than Declarant. The Members of the Board shall be elected the vote of a Majority of Owners.

Section 2: The Board shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law prohibited or by these Bylaws directed to be done by the Owners.

Section 3: In addition to the duties elsewhere imposed by these Bylaws or by resolutions of the Association, the Board shall be responsible for overseeing the following

(a) Care, upkeep and protection of the roads, signs, non-Lot landscaping and other items of general benefit to the Subdivision (all such items, the "Common elements"), including but not limited to the servicing, maintenance, repair and replacement thereof. It is the intention of Declarant and all Owners

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that the obligations of Owners to pay all sums billed by the Association should never fail for lack of a standard to measure or for a lack of clarity as to what is to be maintained. By acceptance hereof and of a deed to a Lot, all Owners waive any and all right to *claim* the non-enforceability of Assessments for lack of a standard or clarity. Owners shall have the right to receive information as to such matters, but not to claim any lack of enforceability;

(b) Hiring and firing of personnel for the maintenance and operation of the Common elements;

(c) Fiscal management of the Association, including but not limited to the determination of and collection of all Assessments In accordance with the Declaration and these Bylaws.

Section 4: The Board may contract with or employ any person, firm or corporation, including the Declarant or an affiliate of the Declarant, to serve as management agent for the Subdivision and the Association, at a compensation established by the Board.

Section 5: Prior to the first meeting of the Association, Kenneth G. Jackson, Richard H. Green and Phillip B. Fisk shall be the initial Board. The term of office of said initial Board shall expire upon the election of their successors. Thereafter, the term of office of each director shall be one year, or until the election of such directors successor, in accord herewith. The directors shall hold office until removal in accord herewith or until their successors have been elected.

Section 6: Vacancies on the Board caused by any reason shall be filled by the then remaining Board members selecting the same; and each person so appointed shall be director until a successor is appointed and announced at the next annual meeting of the Association.

Section 7: At any time, any director previously elected or appointed *may* be removed, with or without cause, by the vote of a Majority of Owners.

Section 8: The first meeting of a newly appointed Board shall be held within five (5) days of appointment at such place as shall be fixed by the directors at the meeting at which such directors were announced, and no notice shall be necessary to the new directors in order to legally constitute such meeting, providing a majority of the Board shall be present

Section 9: Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of directors. Notice of regular meetings of the Board shall be given to each director, personally or by mail, telephone or telegraph, at least ten (10) days prior to the date named for such meeting.

Section 10: Special meetings of the Board may be called by the Board President on three (3) days' notice to each director given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of meeting. Special meetings of the Board may also be called by the Board President or Secretary in *like* manner and on like notice, upon the written request of a majority of the directors.

Section 11: Before or at any meeting of the Board, any director *may*, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a

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director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12: At all meetings of the Board, a majority of the directors then in office shall constitute a quorum for the transaction of business and acts of the majority of the directors present at a meeting at which a quorum is present shall be acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13: The Board shall require that anyone handling or responsible for Association funds shall furnish adequate fidelity bonds; provided, however, that this provision shall not require that the Board Secretary/Treasurer be bonded if, under the terms of any management agreement in effect from time to time, the person, firm or corporation serving as management agent is responsible for collecting and disbursing Assessment funds and is required to account to the Association for said funds at least annually. The premiums on necessary fidelity bonds shall be paid by the Association.

Section 14: No member of the Board shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

ARTICLE V Officers

Section 1: The principal officers of the Association shall be a Board President, a Board Vice President, and a Board Secretary/Treasurer, all of whom shall be elected by the Board. The directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary.

Section 2: The officers of the Association shall be elected annually by the Board at the organization meeting of each new Board, and they shall hold office at the pleasure of the Board.

Section 3: Upon affirmative vote of a majority of the members of the Board, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4: The Board President shall be the Chief Executive Officer of the Association, shall preside at all meetings of the Association and of the Board and shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the powers to appoint committees from among the Lot Owners from time to time.

Section 5: The Board Vice President shall take the place of the Board President and perform such duties whenever the Board President shall be absent or unable to act The Board Vice President shall also perform such other duties as shall from time to time be delegated by the Board.

Section 6: The Board Secretary/Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; shall have charge of such books and papers as the Board

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may direct, shall, in general, perform all the duties customarily performed by an association secretary, shall be responsible for Association funds and securities, for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association, for the deposit of all monies and other valuable effects in the name, and to the credit of the Association, in such depositories as may from time to time be designated by the Board, and for performing the duties customarily incident to the office of an association treasurer. The Board Secretary/Treasurer shall not be responsible for any of the foregoing matters as have been delegated to a management agent pursuant to the provisions of these Bylaws.

Section 7: All agreements, contracts, deeds, leases, checks, notices and other instruments to be executed on behalf of the of the Association shall be executed by any two officers of the Association or by such other person(s), firm(s) or corporation(s), including the management agent, as may be designated by the Board. In no event shall any such document only be signed by one signatory.

Section 8: No officer shall receive any compensation for serving in said capacity, nor shall the expenses of meeting be borne by the Association.

ARTICLE VI Fiscal Management of the Association

Section 1: The Board shall use the following guidelines in the fiscal management of the Association

(a) Receipts and disbursements of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate:

(1) Current routine maintenance and administrative expenses, including a reasonable allowance for current contingencies and working funds other than expenditures chargeable to reserves, and amounts necessary to make up any deficiencies in common expenses for any prior year. Any balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year or shall be transferred to the reserve fund or general operating reserve hereinafter provided for, as determined by the Board.

(2) A reserve fund for the purpose of performing periodic, but non-routine maintenance, replacement and repair *of* to the Common elements and for such other purposes as may from time to time appear to be necessary or appropriate.

(3) A general operating reserve for the purpose of providing a measure of financial stability during periods of special stress, which may be used to meet deficiencies from time to time as a result of delinquent payment of assessments by Owners and other contingencies, *may* be established, from time to time, if so desired by the Board.

(4) Insurance policies obtained and maintained pursuant to Section 7 of this Article VI.

(b) The Board shall adopt a budget for each Association calendar year that shall include the estimated funds required to provide and maintain funds for the foregoing accounts. Said budget shall be based upon the costs set forth in any management agreement in effect pursuant to the

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provisions hereof, to the extent that said agreement is applicable to the accounts established in Section 1(a) of this Article VI. If no such agreement is in effect, the budget shall be determined by the Board, except that the amount for the annual Assessment against any Lot may not be increased by more than fifteen percent (15%) over the preceding year's amount, unless approved by a Majority of Owners, or required to preserve the safety of the Subdivision. During the year 2002, the Assessment against each Lot shall not exceed \$100/month. If the amount assessed in 2002 is fully paid by the assessed parties and is insufficient to pay the routine maintenance required in 2002, the Declarant shall satisfy the deficiency.

Section 2: Copies of the proposed budget and proposed assessments shall be transmitted to each Owner on or before the November 1 preceding the Association year for which the budget is made. If the budget is amended subsequently, a copy of the amended budget shall be furnished to each member.

Section 3: The Assessment against the Lot Owners for their share of the items of the budget shall be made for the Association year by the date of the annual meeting preceding the year for which the Assessment is made. The Assessment shall be due in four equal installments payable quarterly on the first day of each calendar quarter during said year. In the event the annual Assessment proves to be insufficient, the budget and the amount of the Assessment may be amended at any time during the year by the Board, subject, however, to any limitations imposed herein. The unpaid Assessment, as amended, for the remaining portion of the Association fiscal year shall be divided by the number of full quarters remaining in the year and such increased amount shall be payable quarterly for the balance of the installments for the budgeted year.

Section 4: If a Lot Owner shall fail to timely pay an installment of an Assessment, the Association may accelerate the remaining installments of the current year's Assessments upon notice to such Owner, and then the unpaid balance of the current years Assessment shall come due upon the date stated in the notice, but not less than ten (10) days after the forwarding of the notice to the Owner.

Section 5: Assessments for expenses that are not included in the budget, such as for capital expenditures to preserve the Subdivision or parts thereof, shall be made only after notice of the need for such is given to the Owners. After such notice, and upon approval by the Board in the manner required herein, the Assessment shall become effective, and it shall be due after thirty (30) days' notice, in such manner as the Board may require in the notice of Assessment

Section 6: All unpaid Assessments shall bear a late charge computed at a rate of eighteen percent (18%) per annum after thirty (30) days from the time the same are due. In addition, delinquent Owners shall be liable for the costs to the Association, including reasonable attorneys' fees, for collection of such unpaid Assessments. Unpaid Assessments may be collected by the Association pursuant to the provisions of the laws of North Carolina and during the pendency of an action brought to foreclose a lien for an unpaid Assessment on a Lot, the Lot Owner shall be required to pay reasonable rental to the Association and the Association may obtain the appointment of a receiver to collect the same.

Section 7: The Board shall be required to obtain and maintain, to the extent obtainable, any insurance required by the Declaration, fire and extended coverage on any insurable structures in the Common elements, adequate liability Insurance, or insurance otherwise selected by the Board in furtherance hereof. All such policies shall provide that adjustment of loss shall be made with the Board or its designated representatives. All policies of physical damage insurance shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured, and shall provide

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that such policies may not be canceled or substantially modified without at least ten (10) day's prior written notice to all of the insured.

In the event proceeds are received by the Association as a result of an insured casualty, it shall receive and disburse the same as a trustee for the benefit of the affected Owners. The Association shall be responsible to replace the damaged or destroyed structures using the insurance proceeds received by it. Insurance proceeds shall be received and disbursed in substantially the same manner as set forth in the laws of North Carolina.

ARTICLE VII Leasing and Time Sharing

The leasing of Lots in the Subdivision shall be subject to the following provisions:

Section 1: No tenant or other non-Lot Owner occupant shall be allowed to enter into possession of any Lot except pursuant to a written lease. No lease shall be for a period of less than six months.

Section 2: No time sharing type occupancy, whether created by deed or otherwise, may be utilized in connection with any Lot.

ARTICLE VIII Liability of Officer and Directors of the Association

The officers of the Association and members of the Board designated or elected as provided in these Bylaws, shall not be liable to Owners for any mistake of judgment negligence or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the officers and members of the Board against all contractual liability to others arising out of contracts made by the officer and/or Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of these Bylaws. It is intended that the officers and members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association. It is also intended that the liability of any Owner arising out of any contract made by the officers and/or Board or out of the aforesaid indemnity in favor of the officers and/or members of the Board shall be limited to such proportion of the total liability equal to the percentage of Lots owned by such Owner to all Lots sold by Developer or Declarant.

ARTICLE IX Amendment

These Bylaws may be amended by the affirmative vote of a Majority of Owners. No amendment hereof shall occur without notice of the proposed amendment being provided *in* the notice of the meeting at which such amendment is to be considered, unless the same be approved by all Lot Owners. During the Declarant Control Period no amendment hereto may be adopted without the consent of Declarant.