

Prepared by:  
W. PARKER WRIGHT, JR., Atty.  
243 N. Peters Road  
Knoxville, TN 37923

AMENDMENT TO THE BYLAWS  
OF  
WESTCLIFF HOMEOWNER'S ASSOCIATION, INC.

This amendment is made and entered into on this the 10<sup>th</sup> day of January, 1992, by the Westcliff Homeowner's Association, Inc.


WHEREAS, there presently exists a condominium regime with Master Deed and Bylaws of record in Warranty Book 1740, page 735, in the Register's Office for Knox County, Tennessee. Pursuant to the terms and conditions of this Master Deed and Bylaws, said documents may be amended by the proper action of the Westcliff Homeowners Association, Inc. and pursuant to the requirements of those documents, said documents have been amended in order to change the By-Laws.

NOW, WHEREFORE, pursuant to the terms and conditions of the Master Deed and Bylaws for the Westcliff Condominiums of record in Warranty Book 1740, page 735, in the Register's Office for Knox County, Tennessee, said documents are hereby amended as follows:

1. The Bylaws (Exhibit "B" to the Master Deed) of record in Warranty Book 1740, page 756, in the Register's Office for Knox County, Tennessee, are hereby amended to reflect changes as set forth on the following pages of this document.

2. All other provisions of the Master Deed and Bylaws not specifically changed in the following pages of this document remain in full force and effect as presently stated. In the event of any conflict between the original Bylaws or any prior amendments, these amended Bylaws shall control.

INST: 17833 WB 2060 PG: 1106 01/14/1992 08:03:51

  
Instr: 199201140029061  
Pages: 1 of 37  
Cross Ref: WB 2060/1106  
Back File Automation

In Witness Whereof, the Westcliff Homeowner's Association, Inc. has caused this instrument to be executed and its name to be signed hereto by its President and attested by its Secretary this the day and year first above written.

WESTCLIFF HOMEOWNER'S ASSOCIATION, INC.

BY: Mary Nell Taylor  
President

ATTEST: Gather E. Jones  
Secretary

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Mary Nell Taylor with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President of WESTCLIFF HOMEOWNER'S ASSOCIATION, INC. the within named bargainor, a corporation, and that he as such President being authorized so to do executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

Witness my hand and seal at office in Knoxville, this 10th day of January, 1992.

[Signature]  
Notary Public

My Commission Expires:  
11/26/94



INST: 17833 VB 2060 PG: 1107 01/14/1992 08:03:51



Instr: 199201140029061  
Pages: 2 of 37

Back File Automation

## CHANGES TO BYLAWS

### Old Bylaws Section

Section 1.2	- Deleted
Section 5.3	- See Changes
Section 5.9	- See Changes
Section 6.2	- See Changes
Section 6.3	- See Changes
Section 6.4	- See Changes
Section 6.5	- See Changes
Section 6.6	- See Changes
Section 6.7	- Deleted
Section 6.10 (a)	- See Changes
Section 6.11 (a)	- Deleted
Section 6.15	- See Changes, Now 6.14
Section 6.16	- Deleted
Section 7.3	- See Changes
Section 7.4	- See Changes
Section 8.1	- Deleted
Section 8.2	- Deleted
Section 8.3	- Deleted
Section 8.4	- Deleted
Section 8.5	- Deleted
Section 8.6	- See Changes, Now 8.1
Section 8.10	- Deleted
Section 8.12	- Deleted
Section 8.13	- See Changes, Now 8.5
Section 9.5	- See Changes
Section 9.6	- See Changes
Section 10.3 (a)	- See Changes
Section 10.3 (c)	- Deleted
Section 13.1	- See Changes
Section 13.5	- See Changes
Section 13.7	- See Changes

INST: 17833 WB 2060 PG: 1108 01/14/1992 08:03:51



Instr: 199201140029061  
Pages: 3 of 37

Back File Automation

BYLAWS OF WESTCLIFF HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE NO.</u>
1: Definitions	1
2: Plan of Apartment Ownership	2
2.1 Apartment Ownership	2
2.2 Applicability of Bylaws to the Condominium Project	2
2.3 Applicability of Bylaws to Apartment Owners	2
3: Administration of the Westcliff Condominium	3
4: Offices - Seal - Fiscal Year	3
4.1 Principal Office and Registered Office	3
4.2 Other Offices	3
4.3 Seal	3
4.4 Fiscal Year	3
5: Membership and Meetings	3
5.1 Qualification	3
5.2 Place of Meeting	4
5.3 Annual Meeting	4
5.4 Substitute Annual Meeting	4
5.5 Special Meetings	4
5.6 Order of Business	4
5.7 Notice of Meetings - Waiver	5
5.8 Quorum	6
5.9 Voting Rights	6
5.10 Proxies	7
5.11 Majority Vote	7
5.12 Actions Without Formal Meeting	7
6: Board of Directors	7
6.1 General Powers	7
6.2 Number, Term and Qualifications	7
6.3 Nominations	7
6.4 Election of Directors	8
6.5 Removal	8
6.6 Vacancies	8
6.7 Compensation	8
6.8 Loans to Directors and Officers	8
6.9 Liability of Directors	8
6.10 Meetings of Directors	9
(a) Regular Meetings	9
(b) Special Meetings	9
(c) Approved Meetings	9
(d) Quorum	9
(e) Removal of Directors	9
6.11 Action Without Formal Meeting	9
6.12 Presumption of Assent	9

INST: 17833 WB 2060 PG: 1109 01/14/1992 08:03:51



Instr: 199201140029061  
Pages: 4 of 37

Back File Automation

6: Board of Directors (continued)	10
6.13 Powers and Duties	12
6.14 Managing Agent	12
7: Committees	12
7.1 Creation	12
7.2 Vacancy	12
7.3 Removal	12
7.4 Duties	13
7.5 Responsibility of Directors	13
8: Officers	13
8.1 President	13
8.2 Vice Presidents	13
8.3 Secretary	13
8.4 Treasurer	14
8.5 Loans to Officers	14
8.6 Indemnification	14
9: Maintenance - Ordinary Repairs - Alterations to	14
Common Elements	14
9.1 By the Association	15
9.2 By the Co-Owners	15
9.3 Restrictions on Co-Owners	16
9.4 Duty to Report	16
9.5 Alterations to Common Areas	16
9.6 Approval of Payment Voucher	16
10: Insurance and Repair of Casualty Damages	16
10.1 Authority to Purchase	16
10.2 General Requirement	17
10.3 Coverage	17
(a) Casualty Insurance	18
(b) Fidelity Coverage	18
(c) Workmen's Compensation	18
(d) Other Insurance	18
(e) Co-Owner's Insurance	18
10.4 Premiums	18
10.5 Association as Agent	19
10.6 Insurance Trustees	19
(a) General Common Elements	19
(b) Apartments	19
(c) Mortgagees	19
11: Repair and Reconstruction After Fire or Other Casualty	19
11.1 Duty to Repair	20
11.2 Cost Estimates	20
11.3 Assessments for Uninsured Costs	20
11.4 Plans and Specifications	20
11.5 Disbursement of Insurance Proceeds	20
11.6 Surplus	20
12: When Reconstruction is Not Required	21
13: Assessments for Common Expenses and Surplus	21
13.1 Initial Assessment - Annual Assessment	21





Instr: 199201140029081  
Pages: 6 of 37

Back File Automation

13: Assessments for Common Expenses and Surplus (continued)	
13.2 Monthly Installments	22
13.3 Special Arrangements	22
13.4 Purpose of Assessments - Common Expenses	22
13.5 Lien	23
13.6 Joint Liability	23
13.7 No Waiver of Remedies	23
13.8 Effect of Nonpayment of Assessments- Remedies of the Association	23
13.9 Priority of Assessment Lien	24
13.10 Register of Co-Owners and Mortgagees	24
14: Condemnation	25
14.1 Association to Receive Condemnation Awards	25
14.2 Condemnation of General Common Elements	25
14.3 Taking of Apartments	25
14.4 Mortgagees	25
15: First Mortgagees	26
15.1 Notice of Default	26
15.2 Notice of Damage	26
15.3 Notice of Amendments	26
15.4 Membership Meetings	26
15.5 Books and Examination of Books and Records	26
16: First Mortgagee and Co-Owner Approval	26
17: Rules and Regulations	27
18: Remedies	27
19: Amendments	28
20: Miscellaneous	28
20.1 Ad Valorem Taxes	28
20.2 Partial Invalidity	28
20.3 Binding Effect	29
20.4 Gender, Singular, Plural	29
20.5 Governing Law	29

BYLAWS OF WESTCLIFF HOMEOWNERS ASSOCIATION, INC.

Section 1: Definitions

The following words and phrases as used in these Bylaws shall have the meanings hereinafter set forth unless a different meaning is specifically required by the context:

Section 1.1. "Horizontal Property Act" means the Horizontal Property Act of the State of Tennessee as set forth in Chapter 27 of Title 64, Tennessee Code Annotated, as the same may from time to time be amended.

Section 1.2. "Master Deed" means the Master Deed establishing Westcliff Condominium to which these Bylaws are attached and which establishes the horizontal property regime.

Section 1.3. "Land" shall mean the land described in Exhibit A attached to the Master Deed.

Section 1.4. "Building" means the 3-story multi-apartment building located on the land.

Section 1.5. "Condominium Project" means the Land, the Building, and other improvements located thereon and the easements and appurtenances related thereto, all of which have, by the recording of the Master Deed, been submitted to a horizontal property regime.

Section 1.6. "Apartment" means each of the 76 residential dwellings included within the Condominium Project as more particularly described in paragraphs 4 and 5 of the Master Deed.

Section 1.7. "Person" means one or more individuals, corporations, partnerships, associations, trusts or other legal entities capable of holding title to real property.

Section 1.8. "Co-Owner" means the person as defined in Section 1.7 who is the record owner of an Apartment. The term "Co-Owner" shall exclude any person having an interest in an Apartment merely as security for the performance of an obligation.

Section 1.9. "Association" shall mean Westcliff Homeowners Association, Inc., a Tennessee corporation not established for profit, which shall constitute the Council of Co-Owners as defined in the Horizontal Property Act.

INST: 17833 WB 2060 PG: 1112 01/14/1992 08:03:51



Instr: 199201140029061  
Pages: 7 of 37

Back File Automation

Section 1.10. "Board of Directors" means the Board of Directors of the Association.

Section 1.11. "Rules and Regulations" means the rules and regulations from time to time adopted by the Board of Directors of the Association pursuant to these Bylaws.

Section 1.12. "Common Elements" means all parts of the Condominium Project.

Section 1.13. "Limited Common Elements" means those portions of the General Common Elements which are reserved for use by a certain Apartment or Apartments to the exclusion of other Apartments as more particularly described in paragraph 7 of the Master Deed.

Section 1.14. "Common Expenses" shall mean and include (i) all sums lawfully assessed against the Co-Owners by the Association; (ii) all insurance premiums other than insurance obtained by a Co-Owner; (iii) expenses of administration, maintenance, repair, and/or replacements of the Common Elements and reasonable reserved relating thereto; and (iv) expenses declared to be Common Expenses by the Horizontal Property Act, by the Master Deed or by these Bylaws.

Section 1.15. "Plat" means the Plat attached to the Master Deed as Exhibit C containing \_\_\_\_\_ pages and consisting of the "as built" Plat of the Condominium Project and the floor plans and other information necessary for the proper identification of the apartments.

Section 1.16. "First Mortgagees" shall mean the owners and holders of the promissory notes secured by any first lien deed of trust or mortgage on an Apartment.

## Section 2: Plan of Apartment Ownership

Section 2.1. Apartment Ownership. The property which, by the recording and filing of the Master Deed, the Apartment and Co-Owner's deed have been submitted to a horizontal property regime known as "Westcliff Condominium."

Section 2.2. Applicability of Bylaws to the Condominium Project. The provision of these Bylaws are applicable to the Condominium Project and to the use and occupancy thereof.

Section 2.3. Applicability of Bylaws to Apartment Owners. All present and future Co-Owners, mortgagees, lessees and occupants of





Apartments and their employees and any other persons who may use the facilities of the Condominium Project in any manner are subject to the Master Deed, these Bylaws and the Rules and Regulations adopted pursuant hereto and any amendment to the same.

Section 3: Administration of the Westcliff Condominium. The Association shall be responsible for administering, operating and managing the Condominium Project and for enforcing the provisions of the Master Deed, these Bylaws and the Rules and Regulations adopted pursuant hereto as the same may from time to time be amended. The Association shall not engage in any activities not in furtherance or as authorized by the Master Deed, Bylaws and the Rules and Regulations adopted by the Association.

Section 4: Offices - Seal - Fiscal Year.

Section 4.1. Principal Office and Registered Office. The principal office and registered office of the Association shall be located at 5709 Lyons View Drive, Knoxville, Tennessee 37919. The Association may change the principal office and/or the registered office as it deems necessary.

Section 4.2. Other Offices. The Association may have other offices at such other places in the State of Tennessee as the Board of Directors may from time to time determine or as the affairs of the Association may require.

Section 4.3. Seal. The seal of the Association shall contain the name of the Association, the word "seal", the year of incorporation and such other words and figures as may be desired by the Board of Directors. When obtained, such seal shall be impressed in the margin of this section of the Bylaws.

Section 4.4. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 5: Membership and Meetings.

Section 5.1. Qualification. Membership in the Association shall be limited to the Co-Owners, and every Co-Owner shall automatically be a member of the Association. Membership in the Association shall be required and become appurtenant to and may not be separated from apartment ownership.

Membership in the Association shall inure automatically to Co-Owners upon acquisition of a fee simple interest, whether encumbered or not, to any one or more Apartments. The date of recordation of the conveyance in the Office of Knox County Register



of Deeds of an Apartment shall govern the date of ownership of each particular Apartment. However, in the case of death of a Co-Owner, the transfer of ownership shall occur on the date of death in the case of intestacy or the date of probate of will in the event of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased owner died intestate.

Section 5.2. Place of Meeting. All meetings of the membership shall be held at the principal office of the Association or such other place or places in the City of Knoxville, Tennessee, as the Board of Directors may from time to time determine.

Section 5.3. Annual Meetings. The Annual meeting of members shall be held on the second Tuesday of February of each year at 7:30 p.m., Eastern Standard Time. If the second Tuesday of February shall be a legal holiday, the annual meeting shall be held at the same hour on the first day following which is not a legal holiday. At each such meeting, the Board of Directors shall be elected in accordance with the provisions of Section 6 of these Bylaws, and the members shall transact such other business as may properly come before them.

Section 5.4. Substitute Annual Meetings. If an annual meeting shall not be held on the day designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Sections 5.5 and 5.7. A meeting so called shall be designated and treated for all purposes as an annual meeting.

Section 5.5. Special Meetings. It shall be the duty of the President to call a special meeting of the members if so directed by resolution of the Board of Directors or, after the first annual meeting of members, upon a petition signed by Co-Owners having not less than sixty-six and two-thirds percent (66 2/3%) of the total membership votes as determined in Section 5.9 hereof. The notice of any special meeting shall state the time and place of such meeting and the purpose or purposes thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5.6. Order of Business. As far as practical, the order of business at all annual meetings of the membership or at all substitute annual meetings shall be as follows:

- (a) Roll call and certification of proxies.
- (b) Proof of notice of meeting or waiver of notice.



- (c) Reading of minutes of last preceding meeting.
- (d) Report of officers.
- (e) Report of board of directors.
- (f) Report of committees.
- (g) Election of inspectors of election (when so required.)
- (h) Election of members of the board of directors (when so required.)
- (i) Unfinished business.
- (j) New business.
- (k) Adjournment.

Section 5.7. Notice of Meetings - Waiver. The Secretary shall personally deliver to or mail by United States Mail, postage prepaid, to each member entitled to vote a written or printed notice of (a) each annual or substitute annual membership meeting not less than ten (10) nor more than fifty (50) days prior to such meeting and (b) each special meeting not less than seven (7) nor more than thirty (30) days prior to such meeting.

If the notice is personally delivered, a receipt of the notice shall be signed by the receiving member indicating the date on which such notice was received by him. If the notice is mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, postage prepaid, and addressed to the member at his post office address as it appears on the register of Co-Owners of the Association as of the date of the mailing such notice.

Notice given to any one tenant in common or any one tenant by entirety of an Apartment shall be deemed notice to the remaining record owner of such Apartment. In the case of special meetings, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called; but, in the case of an annual meeting or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted thereat unless such statement is specifically required by the provisions of the laws of the State of Tennessee.

Any member may waive necessity of formal notice of any membership meeting by signing a written waiver either before or after the meeting; and upon execution of such waiver, the member



shall not be entitled thereafter to object to the meeting being held or the matters bein passed upon at the meeting because of lack of notice thereof.

Section 5.8. Quorum. Except as otherwise provided in these Bylaws or by the laws of the State of Tennessee governing corporations, the presence, in person or by proxy, of members holding more than fifty percent (50%) of the total vote of the membership as determined by Section 5.9 hereof shall constitute a quorum at all meetings of the members. If a quorum is not present or represented at any meeting, the members entitled to vote at such meeting shall have the power to adjourn the meeting from time to time without notice other than an announcement at the meeting until a quorum is present or represented.

The members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum of members present at the meeting unless a higher percentage of votes is required on any matter presented to the meeting.

Section 5.9. Voting Rights. The total number of votes of all Co-Owners shall be 100, and each Co-Owner shall be entitled to cast the number of votes equal to the percentage interest in the Common Elements appurtenant to the Apartment or Apartments owned by such Co-owner.

If an Apartment is owned by two or more persons (whether individually or in a fiduciary capacity), the votes may be cast by any one of the persons so owning in person or by proxy. If more than one of the persons so owning vote, the unanimous action of all the persons owning said apartment voting shall be necessary to effectively cast the vote allocated to that particular Apartment.

The owners of life estates in the Apartments shall be entitled to cast the vote appurtenant to such Apartments.

If an Apartment is owned by a corporation or other entity, the vote shall be case by one person named in a certificate signed by the president of the corporation owning the Apartment or the presiding officer of any other legal entity owning the Apartment. Such certificate shall be filed with the Secretary of the Association and shall be valid until revoked by a subsequent certificate.

The Developer shall retain and shall be entitled to cast the number of votes equal to the percentage interest in the Common Elements appurtenant to the Apartment or Apartments owned by Developer or those Apartments not yet conveyed to a Co-owner.



Section 5.10. Proxies. Members may vote either in person or by agents duly authorized by written proxy executed by the member or by his duly authorized attorney-in-fact. A proxy shall not be valid after the expiration of eleven (11) months from the date of its execution unless the proxy specifically specifies the length of time which it is to continue in force or limits its use to a particular meeting, but not proxy shall be valid after ten (10) years from the date of its execution. Unless a proxy otherwise provides, any proxyholder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary either during or prior to the meeting in question.

Section 5.11. Majority Vote. A majority of the votes as determined in accordance with Section 5.9 hereof represented at a meeting at which a quorum is present shall be required to adopt any measures voted upon at such meeting, except where a higher percentage vote is required by the Horizontal Property Act, Master Deed, these Bylaws or the laws of the State of Tennessee governing corporations.

Section 5.12. Actions Without Formal Meeting. Any action which may be taken at a meeting of the membership may be taken without a meeting if a consent or ratification, in writing, setting forth the actions so taken, or to be taken, shall be signed by all of the members who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

#### Section 6: Board of Directors

Section 6.1. General Powers. The business and affairs of the Association shall be managed by the Board of Directors or by such committees as the Board of Directors may establish pursuant to Section 7 of these Bylaws.

Section 6.2. Number, Term and Qualification. The Board of Directors shall consist of five (5) individuals. The term of office for Directors shall be 2 years. The Directors shall have staggered terms; three Directors shall be elected one year and two the following year. All Directors shall be members of the Association. Directors may only serve two consecutive terms at a time. At each annual membership meeting, the members shall elect sufficient number of Directors to fill any vacancies created by the expiration of the term of office of any retiring Director.

Section 6.3. Nominations. Nominations for election to the Board of Directors shall be made by a nominating committee consisting of a chairman who shall be a Director and at least two (2) other members of the Association. The nominating committee will be



appointed by the Board of Directors at a time sufficiently in advance of the annual meeting in order that it may make nominations for election to the Board of Directors. The nominating committee shall make as many nominations for election to the Board of Directors as it shall, in its discretion, determine, but not less than the number of vacancies that are to be filled. Nominations may also be made from the floor at the annual meeting.

Section 6.4. Election of Directors. If a member so demands, or if the presiding officer at the annual meeting or substitute annual meeting so directs, the election of Directors shall be by ballot. Each unit shall be entitled to one vote per vacancy. Persons receiving the highest number of votes shall be elected to office.

Section 6.5. Removal. Any Director elected or appointed may be removed from the Board, with or without cause, by a majority vote of the members of the Association at any regular or special meeting of the membership provided that the notice of the meeting must state that the question of such removal will be acted upon at the meeting. As used in this Section, the term "majority vote" shall mean any vote in excess of fifty percent (50%) of the votes of the membership. If any Directors are so removed, their successors may be elected by the membership at the same meeting to fill the unexpired terms of the Directors so removed.

Section 6.6. Vacancies. A Vacancy occurring in the Board of Directors may be filled by special election of the Association.

Section 6.7. Compensation. No member of the Board Directors shall receive any compensation from the Association for acting as a member of the Board Directors. However, each Director shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association.

Section 6.8. Loans to Directors and Officers. No loans shall be made by the Association to its Directors or officers. Any Directors of the Association who vote for or assent to the making of a loan to a Director or officer of the Association and any officer or officers participating in the making of such loan shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 6.9. Liability of Directors. Subject to the provisions of Tennessee Code Annotated Sections 48-58-501- 48-58-509 and as they may from time to time be amended or construed and subject to the laws of the State of Tennessee, the Association shall indemnify and hold harmless each member of the Board of Directors with respect to any liability and expense of litigation arising out of his activities as a director. Any sums required to discharge the



obligations of the Association under this paragraph shall constitute a "Common Expense" which shall be assessed against each Co-Owner. The Board of Directors shall be authorized to purchase insurance for the protection of the Directors, officers, employees or agent of the corporation.

Section 6.10. Meeting of Directors.

(a) Regular Meetings. Regular meetings of the Board of Directors shall be held without notice at such intervals and at such times and places as may be determined from time to time by resolution of the Board of Directors. When meetings fall on legal holidays or other dates when it would be difficult for the Board to meet the Board may reschedule meetings to the soonest next available date.

(b) Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any Director after not less than three (3) nor more than thirty (30) days' written notice to each Director.

(c) Approved Meeting Place. All directors' meetings shall be held in the City of Knoxville or County of Knox, State of Tennessee.

(d) Quorum. A majority of the Directors then holding office shall constitute a quorum for the transaction of business, and every act or decision done or made by a majority of the Directors present at a duly called and held meeting at which a quorum is present shall be regarded as the act or decision of the Board of Directors.

(e) Removal of Director. Any Director failing to attend three consecutive meetings shall be subject to removal from the Board of Directors upon majority vote of the four remaining Directors.

Section 6.11. Action Without Formal Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors. The written approval shall be filed with the minutes of the proceedings of the Board whether done before or after the action so taken.

Section 6.12. Presumption of Assent. A Director of the Association who is present at a meeting of the Board of Directors at which action on any Association matter is taken shall be presumed to have assented to the action so taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the



meeting or unless such Director shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of any such action. A Director who is absent from a meeting of the Board or at any committee shall be presumed to have concurred in the action taken unless he shall deliver or send by registered mail his dissent to the Secretary of the Association within a reasonable time after learning of such action.

Section 6.13. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Condominium Project except such powers and duties as by law, by the Master Deed or by these Bylaws may not be delegated by the Co-Owners to the Board of Directors. Without in any way limiting the powers and responsibilities conferred upon the Board of Directors by these Bylaws, the Master Deed or by law, the Board of Directors shall have the power to and shall be responsible for the following:

- (a) Providing for the operation, care, upkeep, replacement and maintenance of the General Common Elements.
- (b) Determining the funds required for the operation, administration, maintenance, upkeep and other affairs of the Condominium Project and the assessment and collection of the Common Expenses from the Co-Owners as provided in Section 13 of these Bylaws.
- (c) Employing and dismissing personnel necessary for the efficient operation and maintenance of the Condominium Project and establishing and paying salaries and other compensation for such personnel.
- (d) Adopting rules and regulations covering the details of the operation and use of the Condominium Project.
- (e) Opening bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring in the name of the Association, or its designee, Apartments offered for sale or lease or surrendered by their Co-Owners to the Association.
- (g) Purchasing Apartments at foreclosure or other judicial sales in the name of the Association or its designee.





(h) In the event the Association has purchased or otherwise acquired an Apartment, the Association shall have the power to sell, lease, mortgage, vote the votes appurtenant (other than for the election of Directors) or otherwise deal with the Apartments acquired by the Association or its designee.

(i) Granting licenses for vending machines.

(j) Purchasing personal property necessary to properly maintain the Condominium Project and to provide for its operation.

(k) Obtaining insurance for the Condominium Project pursuant to Section 10 of these Bylaws.

(l) Subject to the provisions of Sections 9.1 and 9.2 and 9.3, making repairs, additions and improvements to or alterations of the General Common Elements (including the Limited Common Elements) and repairing and restoring the Condominium Project and establishing reserves therefor.

(m) Keeping detailed accurate records in chronological order of receipts and expenditures affecting the General Common Elements, specifying and identifying the maintenance and repair expenses of the General Common Elements and any other expenses incurred. All books and records shall be kept in accordance with generally accepted principles of accounting and shall be available for examination by all Co-Owners or mortgagees or their duly authorized agents or attorneys at convenient hours on working days. An outside audit shall be made at least once a year.

(n) Keeping a complete record of the minutes of all meetings of the Board of Directors and members in a minute book in which shall be inserted all records of actions taken by the Directors and/or members whether such meeting is held pursuant to written consent or by formal meeting.

(o) Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed.

(p) Enforcing the provisions of the Master Deed, these Bylaws and the Rules and Regulations and bringing or defending any legal actions that may be instituted on behalf of or against the Association.

(q) To do such other things and acts not inconsistent with the Horizontal Property Act, the Master Deed and these Bylaws or which may be authorized by appropriate action of the Board of Directors and/or the Association.

Section 6.14. Managing Agent. The Board of Directors may employ or enter into a management contract with any individual, firm or entity that it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium Project. The Board of Directors shall delegate to such professional person or firm ("Managing Agent") such duties and responsibilities in the management of the Condominium Project as the Board of Directors deems appropriate provided the Board of Directors may not delegate to the Managing Agent the complete and total responsibilities and duties of the Association in violation of the laws of the State of Tennessee. Contracts with Managing Agent shall not exceed one (1) year and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice. The Board of Directors shall have the authority to fix reasonable compensation for the Managing Agent. The Managing Agent shall at all times be answerable to the Board of Directors and subject to its direction.

#### Section 7: Committees

Section 7.1. Creation. The Board of Directors by resolution adopted by a majority of the number of Directors then holding office may create such committees as they deem necessary and appropriate in aiding the Board of Directors to carry out its duties and responsibilities with respect to the management and administration of the Condominium Project. Each committee so created shall have such authorities and responsibilities as the Directors deem appropriate and as set forth in the resolution creating such committee. The Directors shall elect the members of each committee provided that at least one member of the Board of Directors shall serve on each committee.

Section 7.2. Vacancy. Any vacancy occurring on a committee shall be filled by a majority of the number of Directors then holding office at a regular or special meeting of the Board of Directors.

Section 7.3. Removal. Any committee member missing three meetings will automatically be removed from the committee.

Section 7.4. Duties. Each committee shall issue a progress report to the Board of Directors when required.



Section 7.5. Responsibility of Directors. The designation of committees and the delegation thereto of authority shall not operate to relieve the Board of Directors or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Director may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

#### Section 8: Officers

Section 8.1. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members. The President shall also preside at all meetings of the Board of Directors. The President shall see that the orders and resolutions of the Board of Directors are carried out; shall sign all written instruments regarding the General Common Elements and shall execute on behalf of the Association all promissory notes of the Association, if any. In addition, the president shall have all of the general powers and duties which are incident to the office of president of a corporation organized under the laws of the State of Tennessee in the management of the Association in accordance with the Master Deed and these Bylaws.

Section 8.2. Vice Presidents. The Vice Presidents, in the order of their election, unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board of Directors may prescribe.

Section 8.3. Secretary. The Secretary shall keep the minutes of all meetings of members and of the Board of Directors, shall have charge of such books and papers as the Board of Directors may direct, shall attest promissory notes of the Association and shall, in general, perform all duties incident to the office of secretary of a corporation organized under the laws of the State of Tennessee.

Section 8.4. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial statements. The Treasurer shall cause an annual audit of the Association's books and records to be made by a certified public accountant at the completion of each fiscal year; shall prepare a proposed annual budget (to be approved



by the Board of Directors) and a statement of income and expenditures to be presented to the membership at its annual meeting and shall deliver a copy of each to the members. In addition, the Treasurer shall perform all duties incident to the office of treasurer of a corporation organized under the laws of the State of Tennessee.

Section 8.5. Loans to Officers. The Association shall not make any loan, either directly or indirectly, to any officer of the Association. Any officer or officers participating in the making of such loan shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof. Nothing herein is intended to otherwise limit the liability of a Director in connection with such loans.

Section 8.6. Indemnification. Subject to the provisions of Tennessee Code Annotated Sections 48-58-501 through and including 48-58-509 and as they may from time to time be amended or construed and subject to the laws of the State of Tennessee, the Association shall indemnify and hold harmless each officer with respect to any liability and expense of litigation arising out of his activities as an officer. Any sums required to discharge the obligations of the Association under this paragraph shall constitute a "Common Expense" which shall be assessed against each Co-Owner. The Board of Directors shall be authorized to purchase insurance for the protection of the officers.

Section 9: Maintenance - Ordinary Repairs -  
Alterations to General Common Elements

Section 9.1. By the Association. Except as otherwise specifically provided in the Master Deed or these Bylaws, the Association shall maintain, repair and replace, as a Common Expense, all parts of the General Common Elements and the Limited Common Elements. If any incidental damage is caused to any Apartment by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any of the Common General Elements, the Association shall repair such incidental damage at its expense. Notwithstanding the foregoing, all damages to the General Common Elements which are intentionally or negligently caused by Co-Owner, his family, guests, agents, servants, lessees, employees or contractors shall be promptly repaired by the Co-Owner or person causing said damage provided that if such damage is covered by any insurance maintained by the Association, the proceeds of such insurance shall be used for the purpose of making such maintenance, repairs or replacements, and the Co-Owner who is responsible for such damage (whether as a result of such Co-Owner's intentional or negligent act or the



intentional or negligent act of his family, guests, agents, servants, lessees, employees or contractors) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance exceed the amount of the insurance proceeds available for such maintenance, repair and replacement. If a Co-Owner is responsible for any damage to the General Common Elements (either as a result of such Co-Owner's negligent or intentional act or the negligent or intentional act of such Co-Owner's family, guests, agents, servants, lessees, employees or contractors) and such loss or damage is not covered by any insurance maintained by the Association, such Co-Owner shall be responsible for making the maintenance, repairs or replacements within thirty (30) days from the date written demand is made by the Association; and upon failure of such Co-Owner to make such repairs within thirty (30) days, the Association shall make the necessary repairs and the cost of such repairs shall be assessed against the Apartment owned by the Co-Owner.

The Association shall have the irrevocable right, to be exercised by the Board of Directors or its agents, to have access to each Apartment from time to time during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of any of the General Common Elements located therein or accessible therefrom or for making emergency repairs therein which are necessary to prevent damage to the General Common Elements.

Section 9.2. By the Co-Owners. Each Co-Owner, his successor, lessee or assigns, shall be responsible, at his own expense, for maintaining and repairing his Apartment and all portions thereof. Each Co-Owner shall also promptly perform all maintenance, repair and replacements within his Apartment, which, if omitted, would adversely affect the Condominium project or an adjoining Apartment.

Section 9.3. Restrictions on Co-Owners. No Co-Owner shall perform or cause to be performed any maintenance, repair or replacement work which disturbs the rights of other Co-Owners, jeopardizes the soundness or the safety of the Condominium Project or reduces the value thereof. If, in the sole opinion of the Board of Directors, any work performed by a Co-Owner on his Apartment violates this paragraph, such Co-Owner shall immediately, upon receipt of written notice from the Board of Directors, refrain from recommencing or continuing any work until and unless the Board of Directors gives its written approval therefor. Such Co-Owner shall not repair, alter, replace or move or remove any of the General Common Elements located within his Apartment without the prior written consent of the Board of Directors.



Section 9.4. Duty to Report. Each Co-Owner shall promptly report to the Board of Directors or its agents any defect or need for repairs or replacements to the General Common Elements of which such Co-Owner is aware.

Section 9.5. Alterations to Common Areas. The Association is authorized, as a Common Expense, to make minor improvements to and alterations of the General Common Elements; provided, however, that the Association shall not make any major or structural improvements or alterations to the General Common Elements without first obtaining the approval of at least two-thirds (2/3) of the total membership votes as determined in accordance with the Section 5.9 hereof.

Section 9.6. Approval of Payment Vouchers. All vouchers for payment of expenses incurred by the Association in the maintenance, repair, alteration and replacement of the General Common Elements shall be approved in writing jointly by the President and Treasurer. In the absence or disability of the President, the Vice-President may perform the duties of the President as set forth in Section 8.

Notwithstanding the foregoing, the Board of Directors may authorize any officer, member, committee or the Managing Agent to approve or disapprove all vouchers for payment of routine expenses incident to the maintenance, repair, alteration and/or replacement of the General Common Elements so long as the resolution granting such authority specifically limits the maximum amount which may be authorized by such officer, member, committee or Managing Manager on each occasion and so long as such resolution describes the items of expense payment of which are so authorized. Further, the members shall be notified of the adoption of such a resolution by the Board of Directors when the same shall be adopted.

#### Section 10: Insurance and Repair of Casualty Damage

Section 10.1. Authority to Purchase. The Board of Directors is authorized to and shall use its best efforts to maintain insurance coverage on the Condominium Project containing the provisions, covering the risks and in the amounts hereinafter set forth.

Section 10.2. General Requirements. Each insurance policy purchased by the Association shall to the extent possible and/or applicable comply with the following provisions:

(a) The named insureds under such policy shall be the Association, the Co-Owners and the mortgagees as their respective interests may appear. The Managing Agent shall be named as an additional insured as its interest may appear with respect to the



public liability insurance and fidelity insurance hereinafter set forth.

(b) Each policy shall contain a provision whereby the insurer waives subrogation against the Developer, the Association, the Managing Agent (if any) and the Co-Owners and their respective agents, employees, guests, and with respect to the Co-Owners, the members of their household.

(c) Each policy shall contain a provision whereby the insurer waives any defense based on co-insurance or upon any invalidity arising from the acts of the insured.

(d) Each policy shall contain a provision providing that the policy may not be cancelled or substantially modified (including cancellation for nonpayment) without at least ten (10) days prior written notice to the Association, the Co-Owners and their mortgagees.

(e) Any "no other insurance" clause contained in any policy shall specifically exclude policies obtained by Co-Owners.

Section 10.3. Coverage. The Board of Directors of the Association shall, to the extent possible, obtain insurance covering the following risks and in the following amounts:

(a) Casualty Insurance. The Board of Directors of the Association shall procure and maintain a blanket, all risk policy ("Blanket Policy") of fire and extended coverage insurance insuring the entire Condominium Project (but excluding the personal property of the Co-Owners) in an amount not less than 100% of the insurable value of the Condominium Project less land value and value of furnishings located on the General Common Elements based on the then current replacement cost for such Property without reduction for depreciation. The Blanket Policy shall also contain coverage for such risks (including, but not limited to, vandalism and malicious mischief) as any First Mortgagee may require or as the Board of Directors may from time to time determine to be customarily covered with respect to buildings similar in construction, location and use as the Condominium Project.

The Board of Directors shall review the coverage afforded by the Blanket Policy at least annually and shall make adjustments to such coverage as the Board of Directors deems advisable.

The Blanket Policy shall also provide that the insurer will issue (a) to each Co-Owner, a certificate specifying the amount of coverage under the Blanket Policy allocated to such Co-Owner's Apartment and the percentage undivided interest in the General



Common Elements appurtenant thereto and (b) to each mortgagee of an Apartment, a certificate of mortgagee endorsement in such form as the mortgagee may reasonably require. The original of the Blanket Policy and the endorsements thereto shall be delivered to the Board of Directors of the Association, as Insurance Trustees.

(b) Fidelity Coverage. The Board of Directors shall procure and maintain adequate fidelity coverage either in the form of an insurance policy or a fidelity bond insuring and/or protecting the Association against dishonest acts on the part of officers, directors, trustees, volunteers, agents and/or employees who handle or are responsible for the handling of funds of the Association including persons who serve the Association without compensation. Such insurance or fidelity bonds shall be in such amounts as the Board of Directors may from time to time determine, but not less than one and one-half (1 1/2) times the estimated annual operating expenses and reserves of the Association.

(c) Workmen's Compensation. The Board of Directors of the Association shall procure and maintain workmen's compensation insurance if and to the extent necessary to meet the requirements of law.

(d) Other Insurance. The Board of Directors of the Association shall procure and maintain such other or additional insurance as the Board of Directors may from time to time determine.

(e) Co-Owner's Insurance. The Co-Owners shall be entitled to obtain insurance coverage, at their own expense, upon their own personal property and for personal living expenses. Each Co-Owner shall, at his own expense, keep in force comprehensive personal liability insurance in such amounts as the Board of Directors of the Association may from time to time determine provided that such insurance shall not jeopardize the effectiveness or insurability of the Condominium Project Insurance above described.

Section 10.4. Premiums. The premiums for any insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

Section 10.5. Association as Agent. The Association is hereby irrevocably appointed Agent for each Co-Owner and for each mortgagee of an Apartment to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.





Section 10.6. Insurance Trustees. All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Association, the Co-Owners and their mortgagees as their respective interest may appear and shall provide that all proceeds of such insurance shall be paid to the Board of Directors of the Association as Insurance Trustees. The Board of Directors of the Association, as Insurance Trustees, shall receive such proceeds as are paid and shall hold the same in trust for the purposes hereinafter set forth and for the benefit of the Co-Owners and their mortgagees in the following shares:

(a) General Common Elements. An undivided share of the insurance proceeds received by the Board of Directors of the Association, as Insurance Trustees, on the account of damage to the General Common Elements shall be held for each Co-Owner in proportion to his undivided percentage interest in the General Common Elements.

(b) Apartments. Any proceeds received by the Board of Directors of the Association, as Insurance Trustees, on account of damage to Apartments shall be held in the following shares: (i) when the Building is to be restored, the proceeds shall be held for the Co-Owners of the damaged Apartments in proportion to the cost of repairing the damage suffered by each Co-Owner, which cost shall be determined by the Board of Directors of the Association, as Insurance Trustees; (ii) when the Building in which an Apartment is located is not to be restored, an undivided share of the proceeds shall be held for each Co-Owner, such share being the same as such Co-Owner's percentage interest in the General Common Elements.

(c) Mortgagees. In the event a mortgagee endorsement has been issued as to an Apartment, the share of the Co-Owner shall be held in trust for the mortgagee and the Co-Owner as their respective interest may appear.

Section 11: Repair and Reconstruction After Fire or Other Casualty

Section 11.1. Duty to Repair. Subject to the provisions of Section 12 hereof, in the event of damage to or destruction of the Building as a result of fire or other casualty, the Board of Directors of the Association shall arrange for the prompt repair and restoration of the Building (including any damaged Apartments, but not including any wall, ceiling or floor decoration or coverings or other furniture, furnishings, fixtures or equipment in the Apartment installed by the Co-Owner or his predecessor unless such insurance covers a portion or all of such loss to the Apartment, in which event the Association shall repair and replace such damage).

Instr: 199201140029061  
Pages: 25 of 37

Section 11.2. Cost Estimates. As soon as possible following any damage or destruction, the Board of Directors shall secure not less than three (3) independent written bids of the cost of making repairs and restorations of the Condominium Project from three (3) reputable building contractors in the community in which Condominium Project is located.

Section 11.3. Assessments for Uninsured Costs. If the proceeds of the insurance maintained by the Association are not sufficient to defray the cost of restoration and repair, the Board of Directors shall assess as a Common Expense such amounts as may be sufficient to provide payment of such costs, and such assessments shall be in proportion to the percentage interest of each Co-Owner in the General Common Elements.

Section 11.4. Plans and Specifications. Any reconstruction or repair of the Condominium Project shall be substantially in accordance with the Plans subject to the requirements of applicable law at the time of reconstruction to repair.

Section 11.5. Disbursement of Insurance Proceeds. The Board of Directors of the Association, as Insurance Trustees, shall disburse the net proceeds of the insurance collected on the account of casualty and the sums received by the Board of Directors from the collection of assessments against Co-Owners on account of such casualty to the contractors engaged in such repair and restoration in appropriate progress payments.

Section 11.6. Surplus. If the net proceeds of insurance collected on account of casualty exceed the cost of restoration and repair, the Board of Directors of the Association, as Insurance Trustees, shall distribute such remaining funds jointly to the Co-Owners and their respective mortgagees in proportion to the percentage undivided interest of each Apartment in the General Common Elements.

#### Section 12: When Reconstruction Is Not Required

If any part of the Condominium Project shall be damaged by fire or other casualty, such part of the Condominium Project shall be repaired and restored in accordance with the provisions of Section 11 hereof; provided, however, repair and restoration shall not be required where the whole or more than two-thirds (2/3) of the Building is destroyed by fire or other casualty. The percentage of destruction shall be determined by the vote by two-thirds (2/3) of all Co-Owners entitled to vote that such destruction encompasses two-thirds (2/3) or more of the Building.

In such case and unless otherwise unanimously agreed upon by the Co-Owners, the insurance proceeds shall be delivered to the Co-



Owners or their mortgagees, as their interests may appear, in proportion to the percentage interest of each Co-Owner in the Common Elements and the Board of Directors, as soon as reasonably possible, shall sell the Condominium Project in its then condition free from the effect of the Master Deed, which shall terminate on such sale, on terms satisfactory to the Board of Directors. The net proceeds from any such sale, and the net proceeds of all insurance policies, shall thereupon be distributed to the Co-Owners or their mortgagees as their interests may appear in proportion to the percentage interest of each Co-Owner in the Common Elements. If the Board of Directors fails to consummate a sale pursuant to this paragraph within twenty-four (24) months after the destruction or damage occurs, then the Board of Directors shall, or if they fail to do so, any Co-Owner of First Mortgagee may, record a sworn declaration setting forth such decision and reciting that under the provisions of the Master Deed, the prohibition against judicial partition provided for in the Master Deed has terminated and that judicial partition of the Condominium Project may be obtained pursuant to the laws of the State of Tennessee. Upon final judgment of a court of competent jurisdiction decreeing such partition, the Master Deed shall terminate and the Property shall be removed from the provisions of the Horizontal Property Act and the horizontal property regime.

### Section 13: Assessments for Common Expenses and Surplus

Section 13.1. Initial Assessment - Annual Assessment. The initial assessment has been determined by the Developer on the basis of the initial budget. The initial assessment shall remain in effect until the first annual membership meeting. Following the first annual membership meeting and not later than December 15 of each year, the Board of Directors shall give written notice to the Co-Owners of the annual assessment fixed against each Apartment for the next succeeding calendar year. In fixing the annual assessment for each calendar year, the Board of Directors shall adopt a budget for the operation, administration and maintenance of the Condominium Project for that year, which budget shall include an estimate of the Common Expenses for such year and an estimate of the cash required to meet such Common Expenses. In adopting the annual budget, the Board of Directors shall include reasonable reserves for contingencies, working capital and repairs and replacements of the Common Elements including, but not limited to, painting, roof and elevators. The annual assessment against each Apartment shall be an amount equal to the total estimated cash requirement for the Condominium Project as set forth in the budget multiplied by the percentage interest in the General Common Elements which is appurtenant to each Apartment. The failure of the Board to comply with the written notice hereinabove set forth shall not alter or invalidate any obligation of a Co-Owner, any right



of the Association against such Co-Owner or any lien against an Apartment provided for in this Section.

Section 13.2. Monthly Installments. The annual assessment shall be paid to the Association in equal monthly installments on or before the first day of each month during any assessment period. A partial assessment shall be determined and levied against all Apartments for the first month if the sale of the first Apartment takes place other than on the first day of the month.

Section 13.3. Special Arrangements. If for any reason the annual assessments prove inadequate to pay the Common Expenses, the Board may levy special assessments at any time. The special assessments shall be fixed against the Apartments according to their percentage interest in the General Common Elements and the period of the assessment and manner of payment shall be determined by the Board of Directors.

Section 13.4. Purpose of Assessments - Common Expenses. The annual and special assessments fixed and collected pursuant to this Section shall be used to pay the Common Expenses of the Condominium Project including, but not limited to, all expenses, costs and charges incurred by the Association in connection with the administration, operation and management of the Condominium Project; the cost of maintenance, repair, replacement and restoration (including reasonable reserved therefor) of the General Common Elements and Limited Common Elements, or any part thereof, including appurtenant easements; the cost of all insurance obtained by the Board of Directors pursuant to these Bylaws; all charges for utilities and other services to the Condominium Project which are not separately metered to the individual Apartments including, but not limited to, electricity, sewer, water, and master TV antenna charges; and any and all other expenses, costs or charges agreed upon as Common Expenses by the Association or declared Common Expenses by the provisions of the Horizontal Property Act, the Master Deed or these Bylaws. All funds collected by the Association shall be treated as separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the Condominium Project, or the proper undertaking of all acts and duties imposed upon it by these Bylaws, the Articles of Incorporation and the Master Deed. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, pledge or in any manner transfer its membership interest therein except as an appurtenance to his Apartment.



Section 13.5. Lien. Each Co-Owner shall be personally liable for any assessment coming due and payable against his Apartment while he is a Co-Owner of such Apartment. In the event a co-owner refuses to pay an assessment, the Association may proceed to take full legal action to obtain remedy, either by filing a lawsuit or filing a lien against the co-owner's apartment.

Each assessment provided for in this Section, together with interest and collection costs, including attorneys' fees of 15% shall be a charge on and continuing lien upon the Apartment against which the assessment is made, and such lien may be enforced and foreclosed in a manner provided by law; provided, however, that no lawsuit shall be filed and no proceedings to enforce or foreclose such lien shall be commenced until the sums assessed remain unpaid for a period of thirty (30) days after the same shall become due.

Prior to the filing of any lien or lawsuit against a co-owner, the Association shall forward a notice to the co-owner advising of the Association's intention to pursue legal remedy, giving the co-owner ten days in which to pay the monies owed.

Any grantee of an Apartment shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid assessments against the Apartment being conveyed to him, and such Apartment conveyed shall not be subject to a lien for an unpaid assessments in excess of the amount therein set forth.

Section 13.6. Joint Liability. In any voluntary conveyance of an apartment, the grantee thereof shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor made prior to the time of such voluntary conveyance without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Section 13.7. No waiver of Remedies. Institution of a lawsuit to attempt to collect the payment of any delinquent assessment shall not preclude the Association from thereafter seeking by foreclosure action the enforcement or collection of any sums remaining owing to it nor shall proceeding by foreclosure to attempt such collection preclude the institution of a suit at law to collect any sum remaining owing to the Association.

Section 13.8. Effect of Nonpayment of Assessments - Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within thirty (30) days after the due date, the assessments shall bear interest



from the delinquency date at the highest rate allowed by law, and the Association may bring an action at law against the Co-Owner to perfect its lien against the Apartment and to foreclose the same upon the Apartment against which the delinquent assessments were charged, in which event, interest, costs and attorneys' fees equal to fifteen percent (15%) of the principal amount shall be added to the amount of such assessment as may then be due. The Association, with the written consent of all the remaining Co-Owners, shall have the power to bid in at any foreclosure sale of an Apartment and to acquire, hold, lease, mortgage and convey the same. No Co-Owner may waive or otherwise escape lien liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of the Apartment.

Section 13.9. Priority of Assessment Lien. The lien for assessments provided for in this Section shall be prior and superior to all other liens except (a) ad valorem taxes and (b) all sums unpaid on deeds of trust and mortgages secured by an Apartment. The sale or transfer of any Apartment shall not affect the assessment lien against such Apartment. Provided, however, the sale of an Apartment pursuant to the foreclosure sale, execution sale or deed in lieu thereof by a superior lienholder shall extinguish the inferior assessment lien against an Apartment to the extent that such superior lienholder will not be liable for the Apartment's unpaid assessments which accrue prior to the foreclosure, deed in lieu thereof or execution sale, but no such sale or transfer shall relieve an Apartment from liability for assessments thereafter becoming due or for any future lien in connection therewith. The Association shall share in the excess, if any, realized by the sale of any Apartment pursuant to a foreclosure or action instituted by a superior lienholder.

Section 13.10. Register of Co-Owners and Mortgagees. The Association shall maintain a register setting forth the names of the Co-Owners. In the event of the transfer of any Apartment to a third party, the transferee shall notify the Association in writing of his interest in such Apartment, together with recording information necessary to identify the instrument by which the transferee has acquired his interest. Each Co-Owner shall also notify the Association of the parties holding any mortgage on any Apartment, the amount of such mortgage and the recording information necessary to identify the mortgage. The holder of any mortgage upon any Apartment may notify the Association of the existence of any mortgage, and the Association shall register in its records all pertinent information relating thereto.



Instr: 199201140029061  
Pages: 30 of 37

Back File Automation

#### Section 14: Condemnation

Section 14.1. Association to Receive Condemnation Awards. In the event all or any part of the Condominium Project shall be taken in condemnation or by eminent domain, the award of any such taking shall be payable to the Association and shall be disbursed by the Association as hereinafter provided in this Section.

Section 14.2. Condemnation of General Common Elements. If the taking is of General Common Elements and does not consist of taking any part of the Building, the Board of Directors shall arrange for restoration of the remaining General Common Elements and the Association shall disburse the proceeds of the condemnation award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the General Common Elements is to be repaired and reconstructed as provided in Section 11 hereof.

Section 14.3. Taking of Apartments. If the taking includes part of the Building, whether or not there is included in the taking any part of the General Common Elements, and such taking shall make it impossible or impractical to reconstruct within the General Common Elements any Apartment, all or part of which has been taken, then the Co-Owner of any such Apartment shall receive that compensation awarded to him for his Apartment in any condemnation proceeding. Also, if the overall award includes a payment to the Association for the taking of a portion of the General Common Elements and no separate General Common Elements award has been made to a particular Co-Owner, then that Co-Owner shall be paid his fractional interest in the General Common Elements award and shall thereupon execute such Co-owner's undivided interest from the Condominium Project and shall reallocate the undivided interest to all remaining Co-Owners. By accepting a deed for an Apartment, each Co-Owner agrees to execute the amendment to the Master Deed and any required amendment to any of the other condominium documents to confirm the effect of this paragraph. Furthermore, in consideration of any condemnation award paid, the Co-Owner of any Apartment so taken agrees to execute a quitclaim deed conveying his remaining interest in any Condominium Project for which he has been paid to the remaining Co-Owners. Any required amendments and the quitclaim deed shall be prepared at the direction and expense of the Association.

Section 14.4. Mortgagees. If the award to a Co-Owner is not sufficient to pay in full the balance of any mortgage on such Apartment, then any General Common Elements payment by the Association to the Co-Owner shall be payable jointly to the Co-Owner and his mortgagees.





### Section 15: First Mortgagees

The following provisions are intended for the benefit of and may be enforced by the First Mortgagees and no amendment to this Section shall be effective unless approved in writing by at least seventy-five percent (75%) of the first Mortgagees (based on one (1) vote for each first mortgage owned.)

Section 15.1. Notice of Default. The Board of Directors, whenever so requested in writing by a First Mortgagee, shall give written notice to such First Mortgagee of any default by a Co-Owner in the performance of his obligations under the Master Deed, these Bylaws or the Rules and Regulations which is not cured within thirty (30) days.

Section 15.2. Notice of Damage. The Board of Directors of the Association shall promptly notify any First Mortgagee of a damaged Apartment when such damage exceeds \$1,000.00, and the Board of Directors shall promptly notify any First Mortgagee of any damage to the General Common Elements when such damage exceeds \$10,000.00 and of any condemnation for similar proceedings which may affect a First Mortgagee.

Section 15.3. Notice of Amendments. The Board of Directors of the Association shall give notice to all First Mortgagees at least seven (7) days prior to the date on which the Co-Owners, in accordance with the provisions of these bylaws, will vote to amend the Master Deed or Bylaws.

Section 15.4. Membership Meetings. The First Mortgagees or their agents and representatives shall be entitled to attend membership meetings of the Association and shall have the right to speak thereat.

Section 15.5. Books and Examination of Books and Records. Each First Mortgagee shall have the right to examine the books and records of the Association and to receive copies of the annual budgets, audits and other financial reports.

### Section 16: First Mortgagee and Co-Owner Approval

Except as provided by statute or in case of or substantial loss to the Condominium Project, unless at least seventy-five percent (75%) of the First Mortgagees (based upon one (1) vote for each mortgage owned) and Co-Owners (other than the Developer) have given their proper written approval, the Association shall not be entitled to (a) by act or omission, seek to abandon or terminate the





Condominium Project, (b) change the prorata interest or obligations of any Apartment for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the prorata share of ownership of each Condominium Apartment in the Common Elements or (c) partition or subdivide any Apartment, (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium Project shall not be deemed a transfer within the meaning of this loss), or (e) use hazard insurance proceeds for losses to any Condominium Project (whether to Apartments or General Common Elements) for other than the repair, replacement or reconstruction of such Condominium Project.

The foregoing provisions shall not be deemed in any way to limit the rights a particular Co-Owner and his or her First Mortgagee may have with respect to matters affecting such Apartment.

#### Section 17: Rules and Regulations

The Board of Directors shall have the right to make and amend rules and regulations governing the use of the Condominium Project, and the initial Board of Directors will adopt Rules and Regulations which shall be binding on the Co-Owners from the time of their adoption. Such rules and regulations may limit the use of the Common Elements to Co-Owners and their agents as well as provide for the exclusive use of a part of the Common Areas by a Co-Owner or his guest for special occasions, which exclusive use may be conditioned upon a fee to the Association. A copy of the rules and regulations shall be provided to all Co-Owners. Any such rules and regulations may be amended from time to time by the Board of Directors provided that such amendment must be approved by two-thirds (2/3) vote of the Co-Owners before they become effective. Such rules and regulations shall be enforceable as hereinafter provided, but nothing herein shall be construed as permitting the Directors to make or amend rules and regulations contrary to the property rights of the Co-Owners of the Association or contrary to the provisions of the Master Deed or these Bylaws or the law of the State of Tennessee.

#### Section 18: Remedies

The failure of any Co-Owner to comply with any of the terms of the Master Deed, Bylaws or the rules and regulations as the same may from time to time be amended shall be grounds for an action to recover sums due for damages or injunctive relief, or both,



maintainable by the Association on behalf of the Co-Owners or, in a proper case, by an aggrieved Co-Owner.

#### Section 19: Amendments

These Bylaws may be amended at any time by an instrument in writing signed and acknowledged by the Co-Owners holding sixty-six and two-thirds percent (66 2/3%) of the vote in the Association as determined in accordance with Section 5.9 hereof, which instrument shall be effective upon recordation in the Office of the Knox County Register of Deeds; provided, however, that where a larger vote in the Association is required for the Association to take or refrain from taking a specific action as set forth in these Bylaws no amendment of these Bylaws shall be made unless and until the Co-Owners holding such larger percentage of the vote in the Association as determined in accordance with Section 5.9 hereof execute such amendment and the same is duly recorded in the Register of Deeds of Knox County, Tennessee.

Notwithstanding the foregoing, these Bylaws and the Master Deed contain provisions concerning rights, remedies and interests of First Mortgagees. Such provisions in these Bylaws and the Master Deed are to be construed as covenants for the protection of the First Mortgagees on which such First Mortgagees may rely in making loans secured by deeds of trust on the Apartments. Accordingly, no amendment or modification of these Bylaws or the Master Deed impairing or affecting the rights, remedies or interests of a First Mortgagee hereunder shall be adopted without the prior written consent of Seventy-five percent (75%) the First Mortgagees (based on one (1) vote for each mortgage owned.)

#### Section 20: Miscellaneous

Section 20.1. Ad Valorem Taxes. Each Apartment shall be deemed to be a separate parcel and shall be separately assessed and taxed. Each Co-Owner shall be liable solely for the amount of tax assessed against his Apartment and shall not be affected by the consequences resulting from the tax delinquency of other Co-Owners. All tangible personal property owned by the Association in connection with the maintenance, upkeep and repair of the General Common Elements shall be listed for tax purposes in the name of and paid by the Association.

Section 20.2. Partial Invalidity. Invalidation of any covenant, conditions, restriction or other provision of the Master Deed or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.



Section 20.3. Binding Effect. The provisions of these Bylaws shall be binding upon and inure to the benefit of the Co-Owners, their heirs, successors and assigns.

Section 20.4. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning, and the use of any gender shall be deemed to include all genders.

Section 20.5. Governing Law. The provisions of the Master Deed and these Bylaws shall be governed by and construed in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, Developer has caused these Bylaws to be duly executed, this the 10th day of January, ~~1992~~ 1992.

WESTCLIFF HOMEOWNER'S ASSOCIATION, INC.

BY: Maryville Taylor  
President

ATTEST:

[Signature]  
Secretary

(Corporate Seal)

EXHIBIT D

PERCENTAGE UNDIVIDED INTEREST OF EACH APARTMENT  
INTEREST IN COMMON ELEMENTS

The following represents the percentage interest which each apartment has in the Common Elements of Westcliff Condominium:

<u>Apartment #</u>	<u>Type of Apartment</u>	<u>Approximate Square Footage</u>	<u>Percentage Interest in Common Elements</u>
1120	H	1,818	1.85
1121	H	1,818	1.85
1201	H	1,818	1.85
1205	H	1,818	1.85
1219	H	1,818	1.85
1223	H	1,818	1.85
1301	H	1,818	1.85
1305	H	1,818	1.85
1319	H	1,818	1.85
1323	H	1,818	1.85
1101	F	1,232	1.265
1102	F	1,232	1.265
1103	F	1,232	1.265
1104	F	1,232	1.265
1105	F	1,232	1.265
1106	F	1,232	1.265
1107	F	1,232	1.265
1108	F	1,232	1.265
1109	F	1,232	1.265
1110	F	1,232	1.265
1111	F	1,232	1.265
1112	F	1,232	1.265
1113	F	1,232	1.265
1114	F	1,232	1.265
1115	F	1,232	1.265
1116	F	1,232	1.265
1117	F	1,232	1.265
1118	F	1,232	1.265
1119	F	1,232	1.265
1122	F	1,232	1.265
1123	F	1,232	1.265
1124	F	1,232	1.265
1202	F	1,232	1.265
1203	F	1,232	1.265
1206	F	1,232	1.265
1207	F	1,232	1.265

INST: 17833 WD 2060 PG: 1141 01/14/1992 08:03:51



Instr: 199201140029061  
Pages: 36 of 37

Back File Automation

1208	F	1,232	1.265
1210	F	1,232	1.265
1211	F	1,232	1.265
1212	F	1,232	1.265
1213	F	1,232	1.265
1214	F	1,232	1.265
1215	F	1,232	1.265
1216	F	1,232	1.265
1217	F	1,232	1.265
1220	F	1,232	1.265
1221	F	1,232	1.265
1224	F	1,232	1.265
1225	F	1,232	1.265
1226	F	1,232	1.265
1302	F	1,232	1.265
1303	F	1,232	1.265
1306	F	1,232	1.265
1307	F	1,232	1.265
1308	F	1,232	1.265
1310	F	1,232	1.265
1311	F	1,232	1.265
1312	F	1,232	1.265
1313	F	1,232	1.265
1314	F	1,232	1.265
1315	F	1,232	1.265
1316	F	1,232	1.265
1317	F	1,232	1.265
1320	F	1,232	1.265
1321	F	1,232	1.265
1324	F	1,232	1.265
1325	F	1,232	1.265
1326	F	1,232	1.265
1204	G	1,432	1.48
1218	G	1,432	1.48
1304	G	1,432	1.48
1318	G	1,432	1.48
1209	A	533	.55
1222	A	533	.55
1309	A	533	.55
1322	A	533	.55

