

**AMENDED AND RESTATED  
BY-LAWS  
OF  
KAPILANA ESTATES HOMEOWNERS ASSOCIATION, INC**

**ARTICLE I**

**General Provisions**

**March 1, 2006**

SECTION 1. *Adoption of By-Laws.* These By-Laws are adopted pursuant to and in compliance with the provisions of the Missouri Uniform Condominium Act ("Condominium Act") to govern the administration of the condominiums known as KAPILANA ESTATES CONDOMINIUMS ("Condominium"). The Condominium has been established as a condominium regime pursuant to the Condominium Act: These By-Laws amend and supersede in all respects the By-Laws for the Condominium that were appended to and recorded with the Condominium Declaration made September 17, 1984, as set forth in the Fourth Supplement to The Kapilana Estates Condominium Declaration ("the "Declaration"), a copy of which is attached hereto as Exhibit A. These By-Laws shall be effective upon their recordation. Such recordation shall take place after the certification of their adoption by the proper officer of the Association (as hereinafter defined), in accordance with the requirements of the Condominium Act.

SECTION 2. *The Association.* KAPILANA ESTATES HOMEOWNERS ASSOCIATION, INC. (the "Association"), has been incorporated as a Missouri non-profit corporation, and has been organized to provide for the administration of the Condominium. The principal office of the Association is located at the Property or at such place as may be designated from time to time by the Executive Board.

The Association shall govern the affairs of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the provisions of the Declaration, these By-Laws, the Condominium Act and applicable laws of the State of Missouri. A copy of the Articles of Incorporation of the Association are annexed hereto and made a part hereof.

SECTION 3. *Membership.* Each unit owner in the Condominium is, and by accepting title to a unit in the Condominium agrees he or she shall automatically become a member of the Association upon his or her acquisition of title to such unit. The membership of any such unit owner shall terminate automatically upon said unit owner being divested of title to such unit, regardless of the means by which such ownership may be divested, but the obligations incurred by such unit owner while a member shall continue and the rights of the Association to enforce such obligations shall also continue, as hereinafter provided. No person holding any lien, mortgage or other encumbrance upon any unit shall be entitled, by virtue thereof, to membership in the Association or to any of the rights or privileges of such membership unless otherwise specifically provided by the Declaration, these By-Laws or the Condominium Act.

SECTION 4. *Certain Definitions and Application of By Laws.* The words and phrases used herein, if defined in the Condominium Act or the Declaration shall have the meanings set forth therein. The provisions of these By-Laws shall be applicable to present and future owners, tenants, and their agents, servants and employees, and any other person that might use the facilities of the Condominium in any manner, and such persons shall also be subject to the provisions of the Declaration, the Condominium Act and to applicable laws of the State of Missouri. The mere acquisition of title to or rental of any of the condominium units (herein referred to as "units") of the Condominium or the act of occupancy of any said units will signify that these By-Laws and the provision thereof are accepted, ratified and will be complied with by any persons so acquiring title, renting or otherwise occupying a unit.

SECTION 5. *Fiscal Year.* The fiscal year of the Association shall be from January 1 to December 31 or such other fiscal year as may from time to time be established by the Executive Board.

SECTION 6. *Roster of Members.* For purposes of governing the affairs of the Association, the Association shall maintain a current roster of the names and addresses of unit owners to which notice of meetings of the Association shall be sent. Each unit owner shall furnish the Association with his name and current mailing address. No unit owner may vote at meetings of the Association until such information is furnished.

## **ARTICLE 11**

### **Association of Unit Owners**

SECTION 1. *Composition.* The Association shall be comprised of all unit owners, including every person, firm or corporation which owns, jointly, severally or with others, any unit within the Condominium.

SECTION 2. *Voting.* In all elections for members of the Executive Board ("EB Members"), every unit owner shall have the right to cast the number of votes appurtenant to such owner's unit as is on record with the Association, for each and as many persons as there are EB Members to be elected. To prohibit weighted voting and vote splitting, the number of votes appurtenant to a unit may not be split or divided among those EB Members to be elected, but such entire vote must be cast as a unity for each person for whom an owner elects to vote. Votes appurtenant to a unit owned by the Condominium may not be exercised.

At all meetings of the Association, the proxies and ballots shall be received and counted by the Secretary of the meeting and all question touching the qualifications of voters and the validity of proxies and the acceptance or rejection of votes shall be decided by the presiding officer at the meeting. Unless demanded or ordered by a majority of unit owners present, no vote need be by ballot, and voting need not be conducted by inspectors.

SECTION 3. *Votes of Unit Owners; Majority of Unit Owners.* A majority of the votes cast at a meeting of the Association, duly called and at which a quorum is present, shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority of votes cast is required by statute, by the Declaration, or by these By-Laws.

### **ARTICLE III**

#### **The Association**

SECTION 1. *Administration.* The Association shall have the responsibility of governing the affairs of the Condominium. Except as otherwise provided herein, by the Condominium Act, or by other applicable law, decisions and resolutions of the Association shall require a majority vote of unit owners. Except as to those matters which the law specifically requires shall be performed by the vote of unit owners, and those matters set forth in Section 2 of Article VII of these By-Laws, the management of the Association shall be directed and administered by the Executive Board.

SECTION 2. *Annual Meetings.* The annual meeting of the Association shall be held on the first Saturday after Labor Day of each year for the purpose of electing EB Members to succeed those whose terms shall have expired as of the date of such annual meeting, adopting an annual budget and for the transaction for such other business as may come before the meeting.

SECTION 3. *Special Meetings.* Special Meetings of the Association may be called at any time for any purpose or purposes by the President, Vice-President or by 20% of the unit owners or the Executive Board, and shall be called forthwith by the President, by a Vice President, the Secretary or any EB Member of the Association upon the request in writing of 20% of the unit owners or the Executive Board listed on the current roster and who are entitled to vote at such meeting. Such request shall state the purpose or purposes of the meeting. Business transacted at all special meetings of the Association shall be confined to the purpose or purposes stated in the notice of the meeting.

SECTION 4. *Place of Holding Meetings.* All meetings of the Association shall be held at the principal office of the Condominium or elsewhere in the United States as designated by the Executive Board.

SECTION 5. *Notice of Meetings.* Written notice of each meeting of the Association shall be mailed, postage prepaid, by the Secretary to each unit owner of record entitled to vote thereat at his mailing address, as it appears upon the roster of unit owners of the Association, at least ten (10) days before the meeting. Each such notice shall state the place, day and hour at which the meeting is to be held and, the items on the agenda, including the general nature of any proposed amendment to the Declaration or By-Laws, any budget change, and any proposal to remove an EB Member or officer.

SECTION 6. *Quorum.* At any meeting of the Association, the presence in person  
or

by proxy of owners entitled to cast 20% of all the votes entitled to be cast thereat shall constitute a quorum; but this Section shall not affect any requirement under statute or under the Declaration for the vote necessary for the adoption of any measure. In the absence of a quorum the owners present in person or by proxy, by majority vote and without notice other than by announcement, may adjourn the meeting from time to time until a quorum shall attend. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

*SECTION 7. Conduct of Meetings.* Meetings of the Association shall be presided over by the President of the Association or, if he is not present, by a Vice President, or, if none of said officers is present, by a chairman to be elected at the meeting. The Secretary of the Association, or if he is not present, any Assistant Secretary shall act as secretary of such meetings; in the absence of the Secretary and any Assistant Secretary, the presiding officer may appoint a person to act as secretary of the meeting.

*SECTION 8. Voting.* At all meetings of the Association, every unit owner entitled to vote thereat may vote either in person or by proxy appointed by an instrument in writing subscribed by such unit owner or his duly authorized attorney, bearing a date not more than one hundred eighty (180) days prior to said meeting (unless said instrument is granted to a mortgagee or lessee of the unit owner). Such proxy shall be dated, but need not be sealed, witnessed or acknowledged. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. All elections shall be had and all questions shall be decided by a majority vote of unit owners at the duly constituted meeting, except as otherwise provided by law or by these By-Laws.

If only one of the multiple owners of a unit is present at a meeting of the association, he or she is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the Declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

If the chairman of the meeting shall so determine, a vote by ballot may be taken upon any election or matter, and the vote shall be so taken upon the request of unit owners with ten percent (10%) of the votes entitled to vote for such election or matter. In either of such events, the proxies and ballots shall be received and be taken in charge and all questions touching the qualification of votes and the validity of proxies and the acceptance or rejection of votes shall be decided by the tellers. Such tellers shall be appointed by the chairman of said meeting.

## ARTICLE IV

### Executive Board

SECTION 1. *General Powers.* The Condominium shall be managed under the direction of the Executive Board of the Association, to which is delegated all of the rights, powers, duties and privileges enjoyed by or belonging to the Association with respect to the management and operation of the Condominium (except those matters specified in Article V11. Section 2 hereof) including, but not limited to:

(a) To estimate the cost of the expenses of administration, maintenance and repair of the Common Elements and of all exterior portion of the improvements and property, and after determining the amount required annually for such purposes, to determine the manner in which said amount shall be paid to the general maintenance fund to be held, managed and administered by the Executive Board.

(b) To provide water, water storage, waste removal and treatment, electricity and other necessary utility services for the common elements and facilities.

(c) To Purchase and maintain policies of insurance as set forth in the Declaration and these By-Laws.

(d) To furnish, upon request of any unit owner and upon payment of a reasonable fee therefor, a statement of the unit owner's account setting forth the amount of any unpaid assessments, whether general or special or other charges; to keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, whether general or special, and to make such records available for examination by the unit owners at all reasonable times.

(e) To designate, hire, employ and remove all personnel necessary for the maintenance, repair and replacement of the common elements, and to authorize the Manager, if any, to retain, hire, employ and remove any such personnel, for and on behalf of the Executive Board and on the Executive Board's account.

(f) To retain and from time to time contract for the services of attorneys and accountants

(g) To provide for landscaping, gardening, snow removal, painting, cleaning, tuck pointing, maintenance, decorating, repairing, replacement of the common elements and such

furnishings and equipment for the common elements as the Executive Board shall determine are necessary and proper, and the Executive Board shall have the exclusive right and duty to acquire any such furnishings and equipment for the common elements.

(h) To purchase or otherwise acquire or provide for the furnishing of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Executive Board is required to secure or pay for pursuant to the terms of any amended or supplemental Declaration or amended By-Laws now or hereafter filed, or which, in the Executive Board's opinion, shall be necessary or proper for the maintenance and operation of the property as a first class Condominium project or for the enforcement of the Declarations or By-Laws.

(i) To discharge any mechanic's lien or encumbrance levied against the entire property or any part thereof which may in the opinion of the Executive Board constitute a lien against the Property or against the common elements, rather than merely against the interest therein, of the particular unit owners. Where one or more unit owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Executive Board by reason of said lien or liens shall be specially assessed against said unit owners and their respective unit and share.

(j) To maintain and repair any unit if such maintenance or repair is necessary as determined by the Executive Board, to protect the common elements or any other portion of a building, and if the unit owner of such unit has failed or refused to perform said maintenance or repair within a reasonable time under the circumstances, after written notice (signed by a member of the Executive Board or by the Manager) of the necessity of such maintenance or repair has been either personally delivered by any EB Member, the Manager (or their agents, servants, representatives or employees), or deposited in the mail by the Executive Board, the Manager (or their agents, servants, representatives or employees), to the address given by such unit owner as the address to which such unit owner has theretofore designated as his (their) mailing address; and the Executive Board shall levy a special assessment against such unit owner for the cost of said maintenance or repair done or caused to be done. The unit owner shall at all times keep his unit in good order and repair.

(k) To authorize the entry into any unit or on any limited common element when necessary in connection with any maintenance or construction for which the Executive Board is responsible. Such entry into the unit itself or the limited common elements appurtenant to the said unit shall be made with as little inconvenience to the unit owner as practicable, and any damage caused thereby shall be repaired by the Executive Board at the expense of the general maintenance fund.

(l) To establish such restrictions and requirements respecting the use and maintenance of units and the use of the common elements as necessary to prevent unreasonable interference with use of the respective units and of the common elements by the several unit owners; to

establish administrative rules governing the operation and use of the common elements.

(m) To provide a manner of estimating the amount of the annual budget and the manner of assessing and collecting from the unit owners their respective shares of the estimated expenses.

(n) To establish, grant and dedicate easements for public, quasi-public and private utilities in addition to any shown on the plat, in, over and through any of the common elements (excepting therefrom any balcony, porch, patio, stairway or attached storage locker); and to construct and maintain any utility service where the same is not otherwise readily available to the Property or the unit owners. Any such utility service carried on and supplied by the Executive Board under the terms hereof may, in the Executive Board's discretion, be charged (on a uniform basis) to each particular unit consuming the same where separately metered, to be treated in such case as a special assessment against such unit, otherwise such service to be paid for out of the general maintenance fund.

(o) To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in any Condominium Declaration submitting any property in the Condominium to the provisions of the Uniform Condominium Act of the State of Missouri, the By-Laws of the Association and any supplements and amendments thereto.

(p) To prepare a budget, at least annually, in order to determine the amount of the common assessments payable by the unit owners to meet the common expenses of the Association, and allocate and assess such common charges among the unit owners according to their respective common ownership interests in and to the general common elements, and by majority vote of the Executive Board to adjust, decrease or increase the amount of the annual or monthly assessments.

(q) To levy and collect special assessments whenever in the opinion of the Executive Board or the Manager it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or additional capital expenses, or because of emergencies.

(r) To collect all assessments and direct charges due from unit owners by suit or otherwise, and to enjoin or seek damages from a unit owner as is provided in any Declaration now or hereafter filed, and in these By-Laws. To enforce a late charge and to collect interest in connection with assessments remaining unpaid more than 30 days from due date for payment thereof, together with all expenses, including attorney's fees incurred. The Executive Board shall have the duty, right, power and authority to prohibit use of the Condominium unit by the unit owner thereof, his guest, tenants, lessees and invitees in the event that any assessment made remains unpaid more than 30 days from the due date for payment thereof; and from funds collected from unit owners cause to be disbursed regularly and punctually all amounts due for salaries or other compensation due and payable to employees; fire and property insurance premiums; and sums otherwise due and payable as operating

expenses of the Association, including the Manager's compensation.

(s) To protect and defend in the name of the Association any part or all of the Condominium from loss and damage by suit or otherwise.

(t) To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority given by the provisions of any recorded Declaration and By-Laws, and to execute all instruments evidencing such indebtedness as the Executive Board may deem necessary and give security therefor. Such indebtedness shall be the several obligation of all of the owners in the same proportion as their interest in the common elements.

(u) To enter into contracts to carry out their duties and powers; working in conjunction with an accountant, prepare for execution and filing by the Association all forms, reports, and returns required by law in connection with unemployment insurance, workmen's compensation insurance, disability benefits, social security and other taxes now in effect or hereafter imposed, and any requirements relating to the employment of personnel.

(v) To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed available.

(w) In general, to carry on the administration of this Association and to do all of those things necessary and reasonable in order to carry out the governing and the operation of this Condominium, including, but not limited to, any powers granted under the Uniform condominium Act, Chapter 448 R.S.Mo.

*SECTION 2. Number and Term of Office.* The number of members of the Executive Board ("EB Members") shall be four (4) or such other number, but not fewer than three (3), as may be designated from time to time by resolution of a majority of the entire Executive Board and adopted as an amendment to these By-Laws. Members of the Executive Board must be unit owners. The EB Members shall be elected for a two year term at the annual meeting of the Association, except as hereinafter provided, and each EB Member shall serve until his successor shall be elected and shall qualify.

*SECTION 3. Filling of Vacancies.* In the case of any vacancy in the Executive Board through death, resignation, disqualification, removal or other cause, the remaining EB Members, by affirmative vote of the majority thereof, may elect a successor to hold office for the unexpired portion of the term of the EB Member whose place shall be vacant, and until the election of his successor, or until he shall be removed prior thereto.

Similarly and in the event of the number of EB Members being increased as provided in these By-Laws, the additional EB Members so provided for shall be elected by a majority of the entire Executive Board already in office, and shall hold office until the next annual meeting of the Association and thereafter until his or their successors shall be elected and qualified.

Any EB Member may be removed from office with or without cause by a majority of all votes of unit owners who are listed on the current roster and who are entitled to vote for the election of EB Members.

SECTION 4. *Place of Meeting.* The Executive Board shall hold their meetings and keep the books of the Association at the principal office of the Condominium or at such other location within the United States as the Executive Board shall determine. The Executive Board may hold their meetings by conference telephone or other similar electronic communications equipment in accordance with the provisions of Missouri Law.

SECTION 5. *Regular Meetings.* Regular meetings of the Executive Board may be held without a notice at such time and place as shall from time to time be determined by resolution of the Board, provided that notice of every resolution of the Board fixing or changing the time and place for the holding of regular meetings of the Board shall be mailing to each member at least three (3) days before the first meeting held pursuant thereto. The annual meeting of the Executive Board shall be scheduled and held within 30 days following the annual meeting of the Association at which an Executive Board is elected. Any business may be transacted at any regular meeting of the Board.

SECTION 6. *Special Meetings.* Special meetings of the Executive Board shall be held whenever called by direction of the President and must be called by the President or the Secretary upon written request of a majority of the Executive Board. The Secretary shall give notice of each special meeting of the Executive Board, by mailing the same at least three (3) days prior to the meeting or by telephoning the same at least two (2) days before the meeting to each EB Member: but such notice may be waived by any EB Member. Unless otherwise indicated in the notice thereof, any and all business may be transacted, and any EB Member may in writing waive notice of the time, place and objects of any special meeting.

SECTION 7. *Meeting by Telephone Conference Call.* Any meeting of the Executive Board, officers or any committee may be conducted by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this Section shall constitute a presence in person at such a meeting.

SECTION 8. *Action without Notice by Written Consents.* If all the EB Members severally or collectively consent in writing to any action to be taken by the EB Members, such consents shall have the same force and effect as the unanimous vote of the EB Members at a meeting duly held. The Secretary shall file such consents with the minutes of the meetings of the Executive Board.

SECTION 9. *Quorum.* A majority of the EB Members shall constitute a quorum for the transaction of business at all meetings of the Executive Board, but, if at any meeting less than a quorum shall be present, a majority of those present may adjourn the meeting from time to time, and the act of a majority of the EB Members present at any meeting at which there is a quorum shall be the act of the Executive Board, except as may be otherwise specifically provided by law or by these By-Laws.

SECTION 10. *Compensation of EB Members.* EB Members shall not receive any stated salary for their services as such, but shall be entitled to reimbursement of such reasonable expenses as are incurred by them in the performance of their duties as EB Members and as are approved by action of the Executive Board.

SECTION 11. *Committees.* The Executive Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the EB Members, which, to the extent provided in the resolution, shall have and may exercise the powers of the Executive Board. Such committee or committees shall have such names as may be determined from time to time by resolution adopted by the Executive Board.

SECTION 12. *Manager or Management Agent, Employees, etc.* The Executive Board may employ for the Association a management agent or manager (the "Manager"), at a compensation established by the Executive Board, to perform such duties and services as the Executive Board shall authorize or direct including, but not limited to, the duties listed in Section 1 of this Article IV. The Executive Board may employ any other employees or agent to perform such duties and at such salaries as the Executive Board may establish.

## **ARTICLE V**

### **Officers**

SECTION 1. *Election, Tenure and Compensation.* The officers of the Association shall be a President, a Secretary, and a Treasurer, and also such other officers including one or more Vice Presidents and one or more assistants to the foregoing officers as the Executive Board from time to time may consider necessary for the proper conduct of the business of the Condominium. The officers shall be elected annually by the Executive Board at its first meeting following the annual meeting of the Association. The officers may, but need not be, EB Members. Any two or more of the above offices, except those of President and Vice President, may be held by the same person, but no officer shall execute, seal, acknowledge, verify or deliver any instrument in more than one capacity if such instrument is required by law or by these By-Laws to be executed, sealed, acknowledged, verified or delivered by any two or more officers. Officers shall not be compensated in their capacities as such but shall be entitled to reimbursement of such reasonable expenses as are incurred by them in the performance of their duties as officers and as are approved by action of the Executive Board, and shall be entitled to such compensation as the Executive Board shall determine.

In the event that any office, other than an office required by law, shall not be filled by the Executive Board, or, once filled, subsequently becomes vacant, then such office and all references thereto in these By-Laws shall be deemed inoperative unless and until such office is filled in accordance with the provisions of these By-Laws.

Except where otherwise expressly provided in a contract duly authorized by the Executive Board, all officers, employees and agents of the Association shall be subject to removal at any time by

the affirmative vote of a majority of the whole Executive Board, and all officers, agents, and employees other than officers appointed by the Executive Board or of the officers appointing them.

SECTION 2. *Powers and Duties of the President.* The President shall be the chief executive officer of the Association and shall have general charge and control of all of the business affairs and properties of the Condominium. He shall preside at all meetings of the Association.

The President may sign, execute, seal, acknowledge and deliver all authorized bonds, contracts or other obligations in the name of the Association. He shall have the general powers and duties of supervision and management usually vested in the office of president of a corporation. The President shall be ex-officio a member of all the standing committees of the Executive Board. He shall do and perform such other duties as may, from time to time, be assigned to him by the Executive Board.

SECTION 3. *Powers and Duties of the Vice President.* The Executive Board shall appoint a Vice President and may appoint more than one Vice President. Any Vice President (unless otherwise provided by resolution of the Executive Board) may sign, execute, seal, acknowledge and deliver all authorized bonds, contracts, or other obligations in the name of the Association. Each Vice President shall have such other powers and shall perform such other duties as may be assigned to him by the Executive Board or by the President. In case of the absence or disability of the President, the duties of that office shall be performed by any Vice President, and taking of any action by and such Vice President in place of the President shall be conclusive evidence of the absence or disability of the President.

SECTION 4. *Secretary.* The Secretary shall keep and maintain the roster of unit owners containing the name and current mailing address of each unit owner. The Secretary shall give, or cause to be given, notice of all meeting of the Association and of the Executive Board and all other notices required by law or by these By-Laws, and in case of his absence, refusal or neglect to do so, any such notice may be given by any person thereunto directed by the President, or by the EB Members or unit owners upon whose written request the meeting is called as provided in these By-Laws. The Secretary shall record all the proceedings of the meetings of the Association and of the EB Members in books provided for that purpose, and he shall perform such other duties as may be assigned to him by the EB Members or the President. In general, the Secretary shall perform all the duties generally incident to the office of the secretary, subject to the control of the Executive Board and the President.

SECTION 5. *Treasurer.* The Treasurer shall have custody of all the funds and securities of the Association, and he shall keep full and accurate account of receipts and disbursements in books belonging to the Association. He shall deposit all moneys and other valuables in the name and to the credit of the Association in such depositories as may be designated by the Executive Board.

The Treasurer shall disburse the funds of the Association as may be ordered by the Executive Board, taking proper vouchers for such disbursements. He shall render to the President and

the Executive Board, whenever either of them so requests, an account of all his transactions as Treasurer and of the financial condition of the Association.

The Treasurer shall give the Association a bond, if required by the Executive Board in a sum, and with one or more sureties, satisfactory to the Executive Board, for the faithful performance of the duties of his office and for the restoration to the Association in case of his death, resignation, retirement or removal from office of all books, papers, vouchers, moneys, and other properties of whatever kind in his possession or under his control belonging to the Association.

The Treasurer shall perform all the duties generally incident to the office of the treasurer, subject to the control of the Executive Board and the President. Notwithstanding anything herein to the contrary, the provisions of this Article V, Section 5, shall be subject to the terms of any agreement entered into on behalf of the Association with the Manager.

SECTION 6. *Assistant Secretary.* The Executive Board may appoint an Assistant Secretary or more than one Assistant Secretary. Each Assistant Secretary shall (except as otherwise provided by resolution of the Executive Board) have power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as may be assigned to him by the Executive Board or the President. In case of the absence or disability of the Secretary, the duties of the office shall be performed by any Assistant Secretary, and the taking of any action by any such Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

SECTION 7. *Assistant Treasurer.* The Executive Board may appoint an Assistant Treasurer or more than one Assistant Treasurer. Each Assistant Treasurer shall (except as otherwise provided by resolution of the Executive Board) have power to perform all duties of the Treasurer in the absence or disability of the Treasurer and shall have such other powers and shall perform such other duties as may be assigned to him by the Executive Board or the President. In case of the absence or disability of the Treasurer, the duties of the office shall be performed by any Assistant Treasurer, and the taking of any action by any such Assistant Treasurer in place of the Treasurer shall be conclusive evidence of the absence or disability of the Treasurer.

## **ARTICLE VI**

### **Indemnification**

SECTION 1. *Definitions.* As used in this Article VI, any word or words that are defined in Section 351.355 of the General Business Corporations Act of Missouri (the -- Indemnification Section") shall have the same meaning as provided in the Indemnification Section.

SECTION 2. *Indemnification of EB Members and Officers.* The Condominium shall indemnify and advance expenses to an EB Member or officer of the Association in connection with a proceeding to the fullest extent permitted by and in accordance with the Indemnification Section.

SECTION 3. *Indemnification of Employees and Agents.* With respect to an employee or agent, other than an EB Member or officer, of the Condominium, the Association, except as to such indemnification as is required under the Indemnification Section, may, as determined by the Executive Board of the Association, indemnify and advance expenses to such employee or agent in connection with a proceeding to the extent permitted by and in accordance with the Indemnification Section.

## **ARTICLE VII**

### **Obligations of the Owners**

SECTION 1. *Expenses, Assessments.* Each unit owner shall be liable for assessments, or installments thereof, for common expenses for operation and maintenance of the Condominium that come due while such unit owner is the owner of a unit in proportion to his percentage interest in common expenses and common profits as are on record with the Association. Such expenses shall include but not limited to, all types of insurance, and the costs of operation, maintenance, repair, and replacement of the Condominium and the common elements thereof. The Executive Board shall, with approval of the Association as provided in Section 2 of this Article VII, fix a monthly charge for each unit in an amount sufficient to provide for its share of all such current expenses, reasonable reserves for future expenses of administration, and such other expenses as the Executive Board may deem proper, subject to adjustment from time to time, as the Board may deem necessary. Such monthly charge shall be based upon, and computed in accordance with, Section 2 of this Article VII. Such monthly charge shall be due and payable in advance on the first day of every month, shall bear interest at the rate of eighteen percent (18%) per annum accruing from fifteen (15) days following the date due until paid, plus a late charge equal to Fifteen Dollars (\$15.00) per month; and, such monthly charges, together with such interest and late charges, shall constitute a lien on the unit, assessed prior in right to all other charges whatsoever except assessments, liens, and charges in favor of the State of Missouri for taxes past due and unpaid on such unit and amounts and liabilities secured by mortgage instruments duly recorded. Such lien shall be evidenced by a statement of condominium lien recorded in the land records for Camden County, Missouri. Such statement shall include a description of the unit, the name of the unit owner and the amount due, and shall be signed and verified by the President and/or Treasurer of the Association. Whether or not suit is commenced, in any action for collection of monies due the Association from the unit owner, the Association shall be entitled to receive of the unit owner its reasonable costs and attorneys fees. In any suit to foreclose the lien against any unit owner, the Association may represent itself through either the Manager or Executive Board in like manner as any mortgagee of real property. The Manager or Executive Board,

acting on behalf of the Association, shall have the power to bid for and acquire such unit at a foreclosure sale. The delinquent unit owner shall be required to pay to the Association a reasonable rent for the unit until sale or foreclosure, together with all costs and reasonable attorney's fees. Suit to recover a money judgment for unpaid common element expenses shall be maintainable, with all costs and reasonable attorney's fees, without foreclosing or waiving the lien securing the same. The unit owner against whom such lien has been asserted shall not be entitled to any vote on any matter submitted to the Association unless and until such assessment, together with all interest and charges thereon, has been paid in full.

### SECTION 2. *Preparation and Approval of Budget.*

(a) Not later than 30 days prior to the date fixed for each annual meeting of the Association, the Executive Board shall prepare a budget for the succeeding fiscal year and determine and fix the total assessment to be charged during such succeeding fiscal year against all of the units in the Condominium. The omission of the Executive Board, before the expiration of any fiscal year, to fix the assessments for the succeeding fiscal year shall not be deemed to constitute a waiver, modification or release of any unit owner from the obligation to pay his portion of such assessment, or any installment thereof, with respect to any fiscal year, and, in the event of any such omission by the Executive Board to fix assessments for a fiscal year, the assessment fixed for the immediately preceding fiscal year shall continue and be applicable to such fiscal year until a new assessment is fixed therefor.

(b) The budget for each fiscal year shall be approved by the Association by a majority vote of unit owners at the annual meeting of the Association immediately preceding or at the beginning of such fiscal year.

(c) In the event the Executive Board shall determine that for any reason the regular assessment estimated to cover the charges for a fiscal year, which has been approved by the Association for the current fiscal year, is or will become insufficient to meet all of the expenses of the Association for the current fiscal year, it shall then immediately determine the approximate amount of such insufficiency and issue a supplemental or special assessment. The Executive Board may prorate any such supplemental or special assessment and collect the same in installments over the remaining months of the current fiscal year, or may immediately levy a special assessment in a lump sum against each unit in the Condominium.

### SECTION 3. *Maintenance and Repair.*

Every unit owner must perform promptly all maintenance and repair work within his own unit and the limited common elements reserved exclusively for the use of that unit if the omission of such work would be detrimental to the Condominium or to any other unit, and he shall be liable for damages incurred by reason of his failure to so perform such work. If such work is not commenced,

and thereafter diligently pursued by the unit owner within ten (10) days after written demand therefor from the Association, then the Association, its agents, servants and employees may enter the unit and perform the work at the expense of the unit owner, which expense shall be added to, and come due and payable with and as a part of, the owner's next monthly assessment payment due to the Association.

#### SECTION 4. *Use and Alteration of Units.*

(a) A unit owner shall not subdivide or make structural modifications or alterations to the interior or exterior of his unit, or installations located therein, nor make any changes to the exterior appearance of the unit (whether by enclosing, painting or other treatment of any balcony, window trim or otherwise) without having first notified the Executive Board in writing through the Manager, if any, or through the President of the Executive Board, if no Manager is employed, and having first obtained the written approval thereof by the Executive Board. The Board shall have the obligation to answer within sixty (60) days and failure to do so within the stipulated time may be construed as no objection to the proposed modification or alteration and that consent thereto is granted by the Executive Board.

(b) If any unit is subdivided into more than one (1) unit or if two (2) or more units are altered to change the dimensions of such units with the consent of the Executive Board as above provided, an amendment to the Declaration reflecting such authorized alteration of a unit or units shall be signed, sealed and acknowledged by the Association and by the unit owners of the units affected. If the percentage interest in common expenses and profits and interests assigned to the unit or units altered is to be reapportioned between the units, the fact of any such change shall be shown in such amendment to the Declaration.

(c) Residential units in the Condominium shall be used for residential purposes only, and parking units shall be used for parking of motor vehicles only, and no other use; commercial units, if any, in the Condominium shall be used only for such commercial use or purpose as approved by the Executive Board and permitted by applicable zoning regulations.

(d) A unit owner shall not petition or join in any petition for any rezoning (whether a variance, special exception, reclassification, or otherwise) of a unit in the Condominium without previously notifying the Association in writing, through the Manager, if any, or through the President of the Association, if no Manager is employed, and obtaining in advance the written approval thereof by the Executive Board.

#### SECTION 5. *Use of Common Elements.*

(a) Each unit owner shall have the right reasonably to enjoy the limited common elements pertaining to his unit, to the exclusion of all others, but subject to the provisions of the

Declaration, all restrictions of record, the House Rules, such other reasonable rules and regulations adopted by the Association, these By-Laws, and applicable laws of the State of Missouri.

(b) Each unit owner shall have the right reasonably to enjoy the general common elements of the Condominium in accordance with the ordinary and useful purposes for which they are intended and in common with all other unit owners. The Executive Board may adopt rules and regulations further limiting the use and enjoyment of the general common elements.

SECTION 6. *House Rules.* In order to assure the peaceful and orderly use and enjoyment of the Condominium and common elements of the Condominium, the Executive Board may from time to time adopt, modify, amend, and revoke, in whole or in part, at any meeting of the Executive Board duly called for that purpose, such reasonable rules and regulations, to be called the "House Rules," governing the conduct of persons on the Condominium premises, as it may deem necessary. Such House Rules, upon adoption, and every amendment, modification and revocation thereof; shall be delivered promptly to each unit owner and shall be binding upon all unit owners and other occupants of the Condominium.

SECTION 7. *Right of Entry.* The Manager and any person authorized by the Executive Board shall have the right to enter each unit in case of emergency originating in or threatening such unit whether or not the unit owner or occupant is present at the time. Every unit owner and occupant, when so required, shall permit the Manager or its representative to enter his unit at reasonable times for the purpose of performing authorized installations, alterations, or repairs to the common elements therein that relate to central services, provided that requests for entry are made in advance.

SECTION 8. *Title.* Every unit owner shall promptly cause to be duly recorded the deed, lease, assignment, or other conveyance to him of his unit or other evidence of his title thereto and file such evidence of his title with the Executive Board through the Manager, and the Secretary shall maintain such information in the records of the Association.

SECTION 9. *Insurance.* The Executive Board, on behalf of the Association, shall at all times keep the Condominium insured against loss or damage by fire, with extended coverage, with an insurance company authorized to do business in the State of Missouri in an amount as close in amount as practicable to the full replacement value of the Condominium, without deduction for depreciation, in the name of the Executive Board as the trustee for the Association, and payable in case of loss to such bank or trust company (the "Insurance Trustee") authorized to do business in the State of Missouri as the Board shall designate for the custody and disposition as herein provided of all proceeds of such insurance, and from time to time upon receipt thereof cause to be deposited promptly with the unit owners and mortgagees of the units or interest therein, true copies of such insurance policies or current certificates thereof, without prejudice to the right of each unit owner to insure his unit

for his own benefit. In every case of such loss or damage, all insurance proceeds shall be used as soon as reasonably possible by the Association for rebuilding, repairing, or otherwise reinstating the Condominium in a good and substantial manner according to the original plan and evaluation thereof or such modified plans as shall be first approved by the Association. Such policy or policies of insurance shall:

(a) provide that the liability of the insurer thereunder shall not claim any right of set-off, counterclaim, apportionment, proration, or contribution, by reason of any other insurance obtained by or for any unit owner;

(b) contain no provision relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Executive Board, or because of any breach of warranty or condition or any other act or neglect by the Executive Board or any unit owner or any other person under either of them;

(c) provide that such policy may not be canceled (whether or not requested by the Executive Board) except by the insurer giving at least thirty days prior written notice thereof to the Executive Board, the unit owners, and every other party in interest who shall have requested such notice from the insurer;

(d) contain a waiver by the insurer of any right of subrogation to any right of the Executive Board or unit owners against any of them or any other person under them;

(e) contain a standard mortgagee clause which shall:

(i) provide that any preference granted to a mortgagee in such policy shall mean and include all holders of mortgages of any unit of the Condominium, in their respective order and preference, whether or not named therein;

(ii) provide that such insurance, as to the interest of any mortgagee, shall not be invalidated by any act or neglect of the Executive Board or unit owners or any persons under any of them;

(iii) waive any provision invalidating such mortgage clauses by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the mortgagee pay any premium thereon, and any contribution clause; and

(iv) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to said bank or trust company designated by the Executive Board.

The Executive Board, on behalf of the Association and its common expense, shall effect and maintain at all times comprehensive general liability insurance for personal injury and for property damage, and from time to time upon receipt thereof deposit promptly with the unit owners current certificates of such insurance, without prejudice to the right of any unit owner to maintain additional liability insurance for his respective unit.

## **ARTICLE VIII**

### **Execution of Instruments**

SECTION 1. *Instruments Generally.* All checks, drafts, notes, bonds, acceptances, contracts, and all other instruments, except conveyances, shall be signed by such person or persons as shall be provided by resolution of the Executive Board applicable thereto. Unless otherwise provided by resolution of the Executive Board, such instruments shall be signed by the President or Vice President and by the Treasurer or Secretary or Assistant Treasurer or Assistant Secretary.

## **ARTICLE IX**

### **By-Laws**

SECTION 1. *Amendment.* These By-Laws may be amended, modified, or revoked in any respect from time to time by the action of a majority of the entire Executive Board if the amendment does not relate to the number of EB Members, the composition of the Executive Board, the term of office of the EB Members or the method or way in which EB Members are elected or selected; or by the affirmative vote of a majority of unit owners with sixty-seven percent (67%) or more of the votes entitled to be cast therefor at a meeting duly called for such purpose; provided, however, that the contents of these By-Laws shall not contain any matter inconsistent with that which is required to be contained herein by the Missouri Uniform Condominium Act.

SECTION 2. *Conflict.* In the event of any conflict between these By-Laws and the provisions of the Missouri Uniform Condominium Act, the latter shall govern and apply.

## **ARTICLE X**

### **Mortgages**

SECTION 1. *Notice of Association.* A unit owner who mortgages his unit shall notify the Association through the Manager, if any, or the President of the Executive Board in the event there is no Manager, of the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units." The term "Mortgagees," as used

herein, shall be construed to include any lender whose indebtedness is secure by a recorded Deed of Trust or Mortgage.

## **ARTICLE XI**

### **Termination of Condominium**

SECTION 1. The Association may, by the vote of 80% of the votes allocated to the unit owners, waive and terminate the Condominium by Termination Agreement, and divide their respective interests by form of deed in proportion to their respective interest in the common expenses and profits of the Condominium, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each owner.

## **ARTICLE XII**

### **Reconstruction**

SECTION 1. *Repair Reconstruction.* In case of fire or other casualty resulting in damage to the Condominium, the insurance proceeds shall be applied to repair, restore and reconstruct the damaged property, unless more than 80% of the votes allocated to the unit owners shall vote to terminate the Condominium.

SECTION 2. *More Than Two-Thirds Destroyed.* If 80% of the unit owners vote to terminate the Condominium, no reconstruction shall be made. In such case, the insurance proceeds shall be paid to the Insurance Trustee, who shall distribute the same pro rata based upon the percentage interest in common expenses and common profits as are on record with the Association, to the individual unit owners entitled thereto, after first paying out of the respective shares of each unit owner, to the extent sufficient for such purpose, any amounts necessary to satisfy and discharge any liens on the unit of each unit owner. No vote against reconstruction of the Condominium shall be construed as requiring the Executive Board to institute a suit for partition.

SECTION 3. *Excess Cost of Repair.* If the cost of repair or reconstruction exceeds the amount of insurance proceeds, the excess shall be assessed against, and collected from the unit owner of each unit, each unit owner to pay his pro rata share based upon the percentage interest in common expenses and profits appurtenant to such unit as are on record with the Association.

## **ARTICLE XIII**

### **Ratification**

SECTION 1. A person by his purchase of a unit in the Condominium and making settlement therefor does thereby accept and adopt all actions taken by the Association and the Executive Board prior to the date of the purchase and settlement of such unit.

**ARTICLE XIV**

**Common Elements**

SECTION 1. *No Severance of Ownership.* No unit owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Unit without including therein the appurtenant common elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect a unit without including all such appurtenant common elements, shall be deemed and taken to include all such appurtenant common elements even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant common elements of any unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the unit to which such common elements are appurtenant, or as part of a sale, transfer or other disposition of such part of the appurtenant common elements of all units.

**ARTICLE XV**

**Miscellaneous**

SECTION 1. *Captions.* The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws, or the intent of any provision thereof.

SECTION 2. *Gender.* The use of the masculine gender in these By-Laws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural and vice versa, whenever the context so requires.

SECTION 3. *Waiver.* No restrictions, conditions, obligations or provisions contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

SECTION 4. *Notices.* All notices hereunder shall be sent by registered or certified mail to the Executive Board, c/o the Manager, or, if there be no Manager, to the office of the Executive Board at the principal office of the Condominium or to such other address as the Executive Board may hereinafter designate from time to time by notice in writing to all unit owners and to all mortgagees of units. All notices to any unit owner shall be sent by United States first class mail to the address shown on the roster of the unit owners. All notices to mortgagees of units shall be sent by United States first class mail to their respective addresses, as designated by them, from time to time, in writing, to the Executive Board. All notice shall be deemed to have been given when mailed.

Approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Secretary