

**BYLAWS  
OF  
MOUNTAIN SHADOWS RESORT HOMEOWNERS' ASSOCIATION, INC.  
A Tennessee Non-Profit Corporation**

**ARTICLE I  
GENERAL**

A. Name. The name of the Corporation shall be the MOUNTAIN SHADOWS RESORT HOMEOWNERS' ASSOCIATION, INC.

B. Principal Office. The principal office of the corporation shall be 1625 Hidden Hills Rd., Gatlinburg, Tennessee 37738, or may be at such other place as may be subsequently designated, from time to time by the Board of Directors.

C. Definition. As used herein, the term "Association" shall mean this corporation and the Association as defined in the Declaration to which these Bylaws are attached (the "Declaration") and all other words as used herein shall have the same definitions as attributed to them in said Declaration. The Association has been organized for the purpose of administering (but not exclusively unless so provided in the Corporation's Articles of Incorporation) the Planned Unit Development created by the Declaration to which these Bylaws are attached.

**ARTICLE II  
EXECUTIVE BOARD**

Section 2.1. Number and Qualification - Termination of Declarant Control.

(a) The affairs of the Common Interest Community and the Association shall be governed by a Board of Directors, hereinafter referred to as the Executive Board, which, until the termination of the period of Declarant control, shall consist of four persons, and following such date shall consist of five persons, all of whom, excepting the Directors appointed by the Declarant, shall be Unit Owners. If any Unit is owned by a partnership, limited liability company or corporation, any officer, partner or employee of that Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by the Unit Owners, except for those appointed by the Declarant. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Corporation Laws of the State of Tennessee for conducting the elections.

(b) The terms of all Directors shall expire annually. The Declarant shall appoint three of the five Directors of the Executive Board during the period of Declarant control.

(c) The Executive Board shall elect the officers. The Directors and officers shall take office upon election.

(d) At any time after Unit Owners, other than the Declarant, are entitled to elect a Director, the Association shall call a meeting and give not less than 10 nor more than 60 days' notice to the Unit Owners for this purpose. This meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Directors:

1. Number and Term. The number of Directors who shall constitute the whole Board shall be not less than three. The initial Board shall consist of four Directors. Until succeeded by Directors elected at the first annual meeting of members, Directors need not be members; thereafter, all Directors shall be members; provided, however, that no Director appointed by the Developer as provided in the Declaration, these Bylaws or TENNESSEE CODE ANNOTATED §48-58-104, et seq., shall be required to be a member of the Association. Within the limits above specified, the number of Directors shall be determined by the voting members at the annual meeting. The Directors shall be elected at the annual meeting of the members, and each Director shall be elected to serve for the term of one year or until his successor shall be elected and shall qualify.

2. First Board of Directors. The first Board of Directors shall consist of the persons appointed by the Declarant who shall hold office and exercise all powers of the Board of Directors until the first membership meeting, anything to the contrary notwithstanding; provided, any or all said Directors shall be subject to replacement in the event of resignation or death, as provided in a later section of Article 2.7.

Section 2.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Community, which shall include the powers and duties set forth in the Declaration, these Bylaws and the Nonprofit Corporation Act of the State of Tennessee.

Powers of the Board of Directors. The property and business of the Association shall be managed by the Board of Directors, who may exercise all corporate powers not specifically prohibited by statutes, the Articles of Incorporation or the Declaration. The powers of the Board of Directors shall specifically include, but not limited to, the following items:

1. To make and collect assessments and establish the time within which payment of same are due;
2. To use and expend the assessments collected; to maintain, care for and preserve the Units, Unit Property and Association property, except those portions thereof which are required to be maintained, cared for and preserved by the Unit Owners;
3. To purchase the necessary equipment and tools required in the maintenance, care and preservation, referred to in this section;
4. To enter the Units when necessary and at as little inconvenience to the Owner as possible in connection with maintenance, care and preservation;
5. To insure and keep insured the Common Interest and Association Property in the manner set forth in the Declaration against loss from fire and/or other casualty, to protect the Association against public liability, and to purchase such other

insurance as the Board of Directors may deem advisable;

6. To collect delinquent assessments by suit or otherwise, abate nuisances and enjoin or seek damages from the Unit Owners for violations of these Bylaws and the terms and conditions of the Declaration;

7. To employ and/or contract with, if deemed desirable, a maintenance service contractor and/or a manager who shall maintain, service and/or manage the Unit Property, Association Property and related facilities, and to delegate to any contractor or manager the duties necessary in connection with the operation of properties and facilities, to employ workmen, janitors and gardeners, to purchase supplies and equipment and to enter into contracts in connection with any of the foregoing items or for other services deemed desirable; and

8. To employ and/or contract with a rental company to manage overnight, weekly and other short term renting of Units within Mountain Shadows Resort. A contract has been entered into with Mountain Shadows Real Estate and Rental, L.L.C., an affiliate to the Developer, giving this company the exclusive right to handle all short term renting of Units within Mountain Shadows Resort for a period of three years.

9. To make reasonable rules and regulations for the use and occupancy of Mountain Shadows Resort.

Section 2.3. Standard of Care. In the performance of their duties the officers and members of the Executive Board are required to exercise (1) if appointed by the Declarant, the care required of fiduciaries of the Unit Owners and (2) if elected by the Unit Owners, ordinary and reasonable care. In the performance of their duties the officers and members of the Executive Board are fiduciaries and are subject to the insulation from liability of the Tennessee corporation laws. The members of the Executive Board are required to exercise the ordinary and reasonable care of directors of a corporation subject to the insulation of the business judgment rule. If appointed by the Declarant, their fiduciary duties and standards of care to the Unit Owners are those of a director of a stock corporation to its shareholders.

Section 2.4. Additional Limitations. The Executive Board shall be additionally limited pursuant to Article XV of the Declaration.

Section 2.5. Manager. The Executive Board may employ a Manager for the Common Interest Community, at a compensation established by the Executive Board, to perform duties and services authorized by the Executive Board. The Executive Board may delegate to the Manager only the powers granted to the Executive Board by these Bylaws under Section 2.2. Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Executive Board and to fulfill the requirements of the budget.

Section 2.6. Removal of Directors. The Unit Owners, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Unit Owners at which a quorum is present, may remove any Director of the Executive Board, other than a Director appointed by the Declarant, with or without cause.

Section 2.7. Vacancies. Vacancies in the Executive Board, caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made in the following manner:

(a) As to vacancies of Directors whom Unit Owners other than the Declarant elected, by a majority of the remaining elected Directors constituting the Executive Board; and

(b) As to vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

(c) Resignation. Any Director may resign from office at any time. Resignations are to be made in writing and take effect from the time of receipt by the Association, unless some future time is fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

Section 2.8. Regular Meetings. The first regular meeting of the Executive Board following each annual meeting of the Unit Owners shall be held within 10 days after the annual meeting at a time and place to be set by the Unit Owners at the meeting at which the Executive Board shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the Directors are present. The Executive Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

Meetings: Meetings of the Board of Directors shall be had as follows:

1. The first meeting of each Board newly elected by the members shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum is present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the general members' meeting and immediately after the adjournment of the members' meeting.

2. The Board of Directors may establish a schedule of regular meetings to be held at a time and place designated by the Board of Directors. Notice of each regular meeting shall, nevertheless, be given to each Director personally or by mail, telephone or telegraph at least five days prior to the day named for the meeting.

3. Special meetings of the Board of Directors may be called by the President on three days' notice to each Director. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of two Directors.

4. At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority

of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the Articles of Incorporation or by these Bylaws. If a quorum shall not be present in any meeting of Directors, the Directors present may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum shall be present.

Order of Business: The order of business at all meetings of the Board of Directors shall be as follows:

1. Roll call.
2. Reading of minutes of last meeting.
3. Consideration of communications.
4. Resignations and elections.
5. Report of officers and employees.
6. Reports of committees.
7. Unfinished business.
8. Original resolutions and new business.
9. Adjournment.

Annual Statement. The Board will present, not less often than at the annual meeting, and when called for by a vote of the members, at any special meeting of the members, a full and clear statement of business and condition of the Association.

Section 2.9. Special Meetings. Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least three business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

Section 2.10. Location of Meetings. All meetings of the Executive Board shall be held within Sevier County, Tennessee, unless all Directors consent in writing to another location.

Section 2.11. Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

Section 2.12. Quorum of Directors. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Executive Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 2.13. Compensation. A Director may receive a fee from the Association for acting as a Director, as may be set by resolution of the Unit Owners, and may also receive reimbursement for necessary expenses actually incurred in connection with the Director's duties. Directors acting as officers or employees may also be compensated for those duties.

Section 2.14. Consent to Corporate Action. If all the Directors or all Directors of a committee established for such

purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The secretary shall file these consents with the minutes of the meetings of the Executive Board.

Section 2.15. Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Executive Board by using an electronic or telephonic communication method whereby the Director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

### ARTICLE III UNIT OWNERS

Section 3.1. Annual Meeting. Annual meetings of Unit Owners shall be held in Sevier County, Tennessee, at such date set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Unit Owners, in accordance with the provisions of Article II of the Bylaws. The Unit Owners may transact other business as may properly come before them at these meetings.

(a) Annual Meeting. Members shall meet at least once in each calendar year, and that meeting shall be the annual meeting. The first annual meeting shall be held within one year after the first certificate of occupancy is issued on a Unit in Mountain Shadows Resort. Regular annual meetings which are subsequent to the first meeting shall be held on the 1st day of February of each succeeding year, if not a legal holiday, and if a legal holiday, then on the next secular day following.

(b) Membership List. At least 10 days before every annual meeting of the members, a complete list of members entitled to vote at said meeting, arranged numerically or alpha-numerically by units, shall be produced and kept for 10 days at the office of the Association, and this list shall be open to examination by any member throughout this time.

Section 3.2. Budget Meeting. Proposed budgets may be considered at Annual or Special Meetings called for other purposes as well. Financial statements shall be prepared by the association and distributed to all its members in the following manner. A pro forma operating budget shall be distributed by December 1 of each year. It must include all of the following: (1) the estimated revenue and expenses on an accrual basis; (2) the identification of the total cash reserves currently set aside; (3) an estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding used to defray the future repair, replacement of, or additions to, those major components which the association is obligated to maintain; and (4) a general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to such major components.

In lieu of the distribution of the financial statement, the Board of Directors may distribute a summary of the statement,

with the notice that the statement will be available at the business office and copies will be provided upon request. In addition, a statement describing the association's policies and practices in enforcing lien rights and other legal remedies for default of the payment of its assessment against its members must be annually delivered to the members during the 60 day period immediately preceding the beginning of the association's fiscal year.

Section 3.3. Special Meetings. Special meetings of the Association may be called by the President, by a majority of the members of the Executive Board or by Unit Owners comprising twenty (20%) percent of the votes in the Association.

Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called by the President and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing, of ten (10%) percent of the voting members. The request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of the special meeting.

Section 3.4. Place of Meetings. Meetings of the Unit Owners shall be held at Mountain Shadows Resort or may be adjourned to a suitable place convenient to the Unit Owners, as may be designated by the Executive Board or the president.

Section 3.5. Notice of Meetings. The Secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit Owner, not less than 10 nor more than 60 days in advance of a meeting. No action shall be adopted at a meeting except as stated in the notice. Except in the case of emergency special meetings, notice shall also be posted at a conspicuous place on the Property at least 14 days in advance of any annual or special meeting of the members of the Association.

Section 3.6. Waiver of Notice. Any Unit Owner may, at any time, waive notice of any meeting of the Unit Owners in writing, and the waiver shall be deemed equivalent to the receipt of notice.

Section 3.7. Adjournment of Meeting. At any meeting of Unit Owners, a Majority of the Unit Owners who are present at the meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.8. Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Establish number and term of memberships of the Executive Board (if required and noticed);
- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Executive Board (when required);
- (h) Ratification of budget (if required and noticed);

- (i) Unfinished business;
- (j) New business; and
- (k) Adjournment.

Section 3.9. Voting.

(a) If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast all the Votes allocated to the Unit. If more than one of the owners are present, the Votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the Votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit.

(b) Votes allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. 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. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) The Vote of a corporation, limited liability company or business trust may be cast by any officer of that corporation, limited liability company or business trust in absence of express notice of the designation of a specific person by the Board of Directors or Bylaws of the owning corporation, limited liability company or business trust. The Vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, limited liability company, partnership or business trust owner is qualified to vote.

(d) Votes allocated to a Unit owned by the Association may not be cast.

Transfer of Membership. Transfer of membership shall be made only on the books of the Association. Notice of acceptance of a transferee as a member of the Association shall be given in writing to the transferee by the President and Secretary of the Association. Transferor shall automatically no longer be a member of the Association. Membership in the Association may be transferred only as an incident to the transfer of a Unit and shall be subject to the ~~procedures set forth in the Declaration.~~

Section 3.10. Quorum. Except as otherwise provided in these Bylaws, the Unit Owners present in person or by proxy at any meeting of Unit Owners but no less than 10 percent of the members, shall constitute a quorum at that meeting.

Section 3.11. Majority Vote.

1. Vote Required to Transact Business. When a quorum is present at any meeting, the majority vote of the voting members present at that meeting, in person or represented by written proxy, shall decide any questions brought before the meeting,



unless the question is one upon which, by express provision of the Tennessee Statutes, the Declaration, the Articles of Incorporation, or of these Bylaws, a different vote is required, in which case that express provision shall govern and control the decision of that question.

2. Waiver and Consent. Whenever the vote of members at a meeting is required or permitted by any provision of the Tennessee Statutes, the Articles of Incorporation, the Declaration, or these Bylaws to be taken in connection with any action of the Association, the meeting vote of members may be dispensed with if not less than seventy-five (75%) percent of the voting members who would have been entitled to vote upon the action of that meeting if the meeting were held, shall consent in writing to that action being taken.

#### ARTICLE IV OFFICERS

Section 4.1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an Assistant Treasurer, and Assistant Secretary and other officers as it finds necessary. The President and Vice President, but no other officers, need to be Directors. Any two offices may be held by the same person, except the offices of President and Secretary. The office of Vice President may be vacant.

The Board of Directors may appoint other officers and agents as it may deem necessary, who shall hold office in the sole discretion of the Board of Directors and who shall have the authority and perform the duties as from time to time may be prescribed by the Board of Directors.

Section 4.2. Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organizational meeting of each new Executive Board. They shall hold office at the pleasure of the Executive Board.

1. Election. The Board of Directors at its first meeting after each annual meeting of general members shall elect a President, a Vice President, a Secretary and a Treasurer.

2. Term. The officers of the Association shall hold office until their successors are chosen and qualify in their stead.

3. Resignation. Any Officer may resign from office at any time. Resignation is to be made in writing and is to take effect from the time of its receipt by the Association, unless some future time be fixed in the resignation, and then from that date. The acceptance of a resignation shall not be required to make it effective.

4. Vacancies. If the office of the President, Vice President, Secretary or Treasurer becomes vacant by reason of death, resignation, disqualification or otherwise, the Board of Directors, by a majority vote of the whole Board of Directors, may choose a successor or successors who shall hold office for the unexpired term.

Section 4.3. Removal of Officers. Upon the affirmative

vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Executive Board or at any special meeting of the Executive Board called for that purpose.

Section 4.4. President. The President shall be the chief executive officer of the Association. The President shall preside at all meetings for the Unit Owners and of the Executive Board. The President shall have all of the general powers and duties which are incident to the office of President of a nonprofit corporation organized under the laws of the State of Tennessee, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association. The President shall have executive powers and general supervision over the affairs of the Association and other officers. The President shall sign all written contracts to perform all of the duties incident to this office and which may be delegated from time to time by the Board of Directors.

Section 4.5. Vice President. The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice President is able to act, the Executive Board shall appoint some other Director to act in the place of the President on an interim basis. The Vice President shall also perform other duties imposed by the Executive Board or by the President.

Section 4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and the Executive Board. The Secretary shall have charge of the Association's books and papers as the Executive Board may direct and shall perform all the duties incident to the office of Secretary of a nonprofit corporation organized under the laws of the State of Tennessee. The Secretary shall issue notices of all Board of Directors' meetings and all meetings of the members; shall attend and keep the minutes of meetings; and, shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer. The Assistant Secretary, if any, shall perform those duties of the Secretary when the Secretary is absent.

Section 4.7. Treasurer. The Treasurer, shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Executive Board and shall perform all the duties incident to the office of Treasurer of a nonprofit corporation organized under the laws of the State of Tennessee. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these Bylaws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an accounting of all the Treasurer's transactions and of the financial condition of the Association. This officer shall collect the assessments and shall promptly report the status of collections and of all delinquencies to the Board of Directors. This officer shall give status reports to potential transferees on which reports the transferees may rely. The Assistant

Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent. The Treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Executive Board. Except for reserve funds described below, the Treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Executive Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the Treasurer, and executed by two Directors, one of whom may be the Treasurer if the Treasurer is also a Director.

Section 4.8. Agreements, Contracts, Deeds, Checks, etc. Except as otherwise provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Executive Board.

Section 4.9. Compensation. An officer may receive a fee from the Association, in an amount set by resolution of the Unit Owners, for acting as an officer. An officer may also receive reimbursement for necessary expenses actually incurred in connection with Association duties.

Section 4.10. Resale Certificates and Statements of Unpaid Assessments. The Treasurer, Assistant Treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute resale certificates, in accordance with Section 6.8 of the Declaration and statements of unpaid assessments, in accordance with Section 4.13 of the Declaration.

The Association may charge a reasonable fee for preparing resale certificates and statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish resale certificates and statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

#### **ARTICLE V ENFORCEMENT**

Section 5.1. Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules and regulations adopted by the Executive Board or the breach of any provision of the Documents shall give the Executive Board the right, after Notice and Hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

(a) Right to Enter and Abate. To enter the Unit or Limited Common Element in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that Unit) that is existing and creating a danger to the

Common Elements contrary to the intent and meaning of the provisions of the Documents. The Executive Board shall not be deemed liable for any manner of trespass by this action; or

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

(c) Foreclosure of Lien; Damages Claim. If an owner of a Unit does not pay any sum, charge or assessment required to be paid to the Association within 30 days from the filing of a statement of lien and the mailing of notice of lien pursuant to Section 4.8.6 of the Declaration, the Association, acting on its own behalf or through its Board of Directors or Management Firm acting on behalf of the Association, may foreclose the lien, encumbering the Unit upon which the required money is owing in the same fashion as mortgage liens are foreclosed. The Association shall be entitled to the appointment of a Receiver if it so requests. The Association shall have the right to bid on the Unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In lieu of foreclosing its lien, the Association may, through its Board of Directors, or Management Firm acting in behalf of the Association, bring suit to recover a money judgment for sums, charges or assessments required to be paid to the Association, without waiving its lien. In any action either to foreclose its lien or to recover a money judgment brought by or on behalf of the Association against a Unit Owner, the losing defendant shall pay the Association's costs, including a reasonable attorney's fee, and any costs and attorney's fees incurred on appeal.

(d) Loss of Membership. If an action of foreclosure is brought against the owner of a Unit for the nonpayment of money due the Association, and as a result, the interest of the owner in and to the Unit is sold, then, at the time of sale, the Unit Owner's membership shall be cancelled and membership shall be issued to the purchaser at the foreclosure sale.

(e) Reimbursement Upon Sale. If the Association becomes the owner of a Unit by reason of foreclosure, it shall offer said Unit for sale, and when a sale is consummated, it shall deduct from the proceeds all sums of money due it for monthly assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees and any and all expenses incurred in the resale of the Unit, which shall include, but not be limited to, advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the Unit in question. All monies remaining after deducting the foregoing items of expenses shall be returned to the former owner of the Unit in question.

(f) Violations and Other Defaults. In the event of violation of the provisions of the Declaration, Articles of Incorporation or these Bylaws, as they are now or may hereafter be constituted, the Association, on its own behalf, may bring appropriate action to enjoin a violation or to enforce the provisions of the documents just enumerated, or sue for damages, or take all these courses of action at the same time, or pursue any other legal remedy it may deem appropriate.

(g) Attorney's Fees. In the event of legal action brought against a Unit Owner, the losing Defendant shall pay to the Plaintiff reasonable attorney's fees and court costs, including

reasonable attorney's fees and court costs incurred on appeal.

(h) Equitable Remedies. Each owner of a Unit, for the owner, the owner's heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of nuisance, regardless of the harshness of the remedy available to the Association and regardless of the availability of the other equally adequate legal procedures. It is the intent of all Unit Owners to give to the Association a method and procedure which will enable it at all times to operate on a businesslike basis, to collect those monies due and owing it from Unit Owners and to preserve other Unit Owners' rights to enjoy their Unit free from unreasonable restraint and nuisance.

(i) Surrender. In the event of the legal termination of a membership and of the occupancy rights thereunder through any procedure set forth in this Article, the member or any other person or persons in possession by or through the right of the member shall promptly quit and surrender the owned Unit to the Association in good repair, ordinary wear and tear and damage by fire or other casualty excepted, and the Association shall have the right to enter and to possess the owned Unit. The member and any successor in interest, by operation of law or otherwise, hereby waives any and all notice and demand for possession, if required by the laws of the County in which the Unit is located, the State of Tennessee and the United States of America.

Section 5.2. Fine for Violation. By resolution, following Notice and Hearing, the Executive Board may levy a fine of up to \$50.00 per day for each day that a violation of the Documents or Rules persists.

#### ARTICLE VI INDEMNIFICATION

The Directors and officers of the Association shall have the liabilities, and be entitled to indemnification, as provided in Sections 48-58-501 through 48-58-509 of the Tennessee Nonprofit Corporation Act.

#### ARTICLE VII RECORDS

Section 7.1. Records and Audits. The Association shall maintain financial records. The financial records shall be maintained and audited in accordance with the Declaration and these Bylaws. The cost of the audit shall be a Common Expense unless otherwise provided in the Documents.

Section 7.2. Examination. All records maintained by the Association or the Manager shall be available for examination and copying by any Unit Owner, any holder of a Security Interest in a Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

Section 7.3. Records. The Association shall keep the following records:

(a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Association that it holds a

mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;

(b) An account for each Unit Owner showing any other fees payable by the Unit Owner;

(c) A record of any capital expenditures in excess of \$3,000.00 approved by the Executive Board for the current and next two succeeding fiscal years;

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

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

(f) The current operating budget as adopted and ratified.

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

(h) A record of insurance coverage provided for the benefit of Unit Owners and the Association;

(i) A record of any alterations or improvements to Units or Limited Common Elements which violate any provisions of the Declarations of which the Executive Board has knowledge;

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

(k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;

(l) Balance sheets and other records required by local corporate law;

(m) Tax returns for state and federal income taxation;

(n) Minutes of proceedings of incorporators, Unit Owners, Directors, committees of Directors and waivers of notice; and

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

Section 7.4. Form Resale Certificate. The Executive Board shall adopt a form resale certificate containing the information required in Sections 4.13 and 6.8 of the Declaration.

#### ARTICLE VIII MISCELLANEOUS

Section 8.1. Notices. All notices to the Association or the Executive Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the

Association, or to such other address as the Executive Board may designate by written notice to all Unit Owners and to all holders of Security Interests in the Units who have notified the Association that they hold a Security Interest in a Unit. Except as otherwise provided, all notices to any Unit Owner shall be sent to the Unit Owner's address as it appears in the records of the Association. All notices to holders of Security Interest in the Units shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 8.2. Fiscal Year. The fiscal year shall be the calendar year. The Board of Directors is expressly authorized to change this fiscal year at any time for the convenience of the Association.

Section 8.3. Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.4. Office. The principal office of the Association shall be on the Property or at such other place as the Executive Board may from time to time designate.

Section 8.5. Seal. The seal of the Association shall have inscribed thereon the name of the Association. Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, printed, drawn or otherwise produced.

Section 8.6. Registers. The Secretary of the Association shall maintain a register in the corporate office showing the names and addresses of members.

Section 8.7. Parliamentary Rules and Arbitration:

(a) Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration or these Bylaws.

(b) Conflict. In the event of any conflict between the Rules and Regulations adopted, or from time to time amended or modified, and the Declaration, the Articles, these Bylaws or the Tennessee Horizontal Property Act, the latter shall prevail. If any unreconciled conflict should exist or arise with respect to the interpretation of these Bylaws and the Declaration, the provisions of the Declaration shall prevail.

(c) Captions. The captions in these Bylaws are inserted only as a matter of convenience and for reference and in no way define or limit the scope of these Bylaws or the intent of any of its provisions.

Section 8.8. Construction.

(a) Generally. Wherever the masculine singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, whenever the context so requires. Should any Article, Section, sentence,

phrase or word of these Bylaws be deemed to be invalid, void or be or become unenforceable at law, or in equity, the remaining provisions of these Bylaws shall, nevertheless, be and remain in full force and effect.

(b) Dispute Resolution. In connection with any internal disputes arising among Unit Owners, the association and their agents and assigns, or with regard to disputes arising between the Unit Owners and the Design Review Committee, the Association and their agents and assigns regarding the interpretation or implementation of the rules and regulations of the Design Review Committee, the Association's rules and regulations, the Declaration or the Bylaws, the parties to the dispute may, on a voluntary basis, submit the dispute to binding arbitration. If the parties cannot agree upon the submission of such dispute to binding arbitration, then such dispute may be decided by declaratory judgment action in the courts of Sevier County, Tennessee.

Section 8.9. Rules and Regulations. The Board of Directors shall have the exclusive authority to adopt and from time to time amend, modify or rescind the Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Units, the Common Interest Property, any Association Property and any facilities or services available to the Unit Owners. A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous place and a copy shall also be furnished each Unit Owner.

Section 8.10. Other Miscellaneous Provisions. In addition to the other provisions of these Bylaws, the following rules and regulations, together with additional rules and regulations as may be adopted by the Board of Directors, shall govern the use of the Units and the conduct of all occupants.

(a) Residential Units shall be used only for residential purposes.

(b) Owners or their guests, invitees, servants or lessees shall not use or permit the use of their premises in any manner which would be disturbing or be a nuisance to other owners, or in such a way as to be injurious to the reputation of the property.

(c) Use of the Units shall be consistent with existing laws, these Bylaws and so long as that use does not constitute a nuisance.

(d) Units may not be used for business use, or for any commercial use whatsoever; provided, however, Developer, as defined in the Declaration, shall have the continuing rights as long as it owns one or more Units to:

(i) transact any business necessary to consummate sales or rentals of Units or portions thereof, including but not limited to the right to continue construction of the Units and any subsequent Units developed by Developer, maintain models, have signs, use the Common Elements and show Units; and

(ii) to maintain sales offices, signs and all items pertaining to sales, which items shall not be considered Common Elements and shall remain the property of the Developer.



(e) Common Elements shall not be obstructed, lettered, defaced or misused in any manner.

(f) No structural changes or alterations shall be made in any Unit, except upon approval of the Design Review Committee.

(g) The Board of Directors may, from time to time, modify, amend or add to these rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer, Owners of a majority of the Units may overrule the Board with respect to any modifications, amendments or additions. Copies of modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Unit Owner not less than 30 days prior to the effective date. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Developer.

Section 8.11. Working Capital. A working capital fund is to be established in the amount of two months' regularly budgeted initial Common Expense assessments, measured as of the date of the first assessment on the first phase, for all Units as they are created in proportion to their respective Allocated Interests in Common Expenses. Any amount paid into this fund shall not be considered as advance payment of assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Association by the Declarant at the time the sale of the Unit is closed or at the termination of Declarant control pursuant to Section 3.4 of the Declaration, if earlier. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment, with a lien on the Declarant's unsold Units pursuant to the Act. Until termination of Declarant control of the Executive Board, the working capital shall be deposited without interest in a segregated fund. While the Declarant is in control of the Executive Board, the Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions or construction costs or to make up budget deficits.

Section 8.12 Reserves. As a part of the adoption of the regular budget pursuant to Sections 4.3 of the Declaration, the Executive Board shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major Common Element improvements.

Section 8.13. Assessments.

1. Determination of Assessments.

(a) Generally. The Board of Directors shall fix and determine from time to time the sum or sums necessary and adequate for the common expenses of the Unit. Common Expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the Limited Common Elements, Association Property, Community Association fees and assessments, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, real estate taxes on Common Interest Property, and any other expenses

designated as a Common Expense. The Board of Directors is specifically empowered on behalf of the Association to make and collect assessments, to lease, maintain, repair and replace the Common Elements and any Limited Common Elements of the Units and Association Property, and to establish reserves or assessments for the betterment of the Common Elements which shall be assessed against the Unit Owners in the proportions or percentages of their share of Common Expenses, as provided in the Declaration. Said assessments shall be payable monthly, in advance, and shall be due on the first day of each month, in advance, unless otherwise ordered by the Board of Directors. Special assessments, if required by the Board of Directors, shall be levied in the same manner as provided for regular assessments and shall be payable in the manner determined by the Board of Directors. The foregoing powers and duties of the Association may be delegated to a Management Firm.

(b) Notice; Payment. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment.

(c) Effect of Management Agreement. The Board of Directors may delegate the ministerial duties of collecting assessments to a Management Firm, as long as the Management Agreement remains in effect, and as provided in the Management Agreement. The Board of Directors retains the exclusive duty to make assessments as to the following:

(i) Special assessments.

(ii) Acquisition of units, as provided in these Bylaws and pursuant to the Declaration to which these Bylaws are attached, subject to the written approval of parties specified therein.

2. Application of Payments and Commingling of Funds. All sums collected by the Association from assessments may be commingled in a single fund or divided into more than one fund as determined by the Board of Directors of the Association or by a Management Firm, so long as the Management Agreement with that Management Firm remains in effect. All assessment payments by a Unit Owner shall be applied first to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances, as provided herein and in the Declaration, and then to general or special assessments, in the manner and amounts the Board of Directors determines. A Management Firm may commingle the Association's funds with the funds of others for whom it is acting as Manager, provided proper accountings are kept; however, reserve accounts must be kept separate and in interest-bearing accounts.

3. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining assessment installments for the fiscal year within which the delinquency occurs upon notice thereof to the Unit Owner, and, thereupon, the unpaid balance of the assessment shall become due and payable at once. See, additional remedies for nonpayment of assessments set forth in Section 4.8 of the Declaration.

4. Audit. During the term of any Management Agreement, the Management Firm shall render to the Association a statement for each fiscal year in the manner and time set forth in the Management Agreement. The Management Firm shall perform a continual internal audit of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it. During the term of the Management Agreement, the Association may conduct an external audit by an independent auditor acceptable to the Management Firm at a reasonable time agreed to by the Management Firm, provided, however, the request for inspection is not made more than once in any calendar month and provided that the cost and expense is borne by the Association. Upon the termination of the Management Agreement, an audit of the accounts of the Association shall be made annually. This audit shall be prepared by a Certified Public Accountant determined by the Board of Directors. A copy of this report shall be available to the members of the Association in the office of the Association and with the Treasurer of the Association. This report shall be available no later than three months after the end of the year for which the report is made. The provisions of a Management Agreement applicable thereto shall supersede the foregoing. The consent of the Management Firm as to an independent auditor who may be employed to conduct an external audit, as set forth in this section, shall not be unreasonably withheld.

5. Budget. The annual budget shall be prepared by the Board of Directors with the assistance of any Management Firm, as long as the Management Agreement remains in effect, and by the Board of Directors thereafter. The proposed annual budget of common expenses shall be mailed to the Unit Owners not less than 30 days prior to the meeting at which the budget will be considered, together with a notice of that meeting. When the budget shall be prepared and adopted by the Board of Directors as provided in these Bylaws, then the Unit Owners shall be given written notice of the time and place at which the meeting of the Board of Directors to consider the budget shall be held, and that meeting shall be open to the Unit Owners. If, in any fiscal or calendar year, a budget adopted by the Board of Directors requires assessments against the Unit Owners exceeding 115 percent of assessments for the preceding year, then upon written application of 10 percent of the Unit Owners, a special meeting of the Unit Owners shall be held upon not less than 10 days written notice to each Unit Owner but within 30 days of the delivery of the application to the Board of Directors or any member thereof. At the special meeting, Unit Owners may consider and enact a revision of the budget or recall any and all members of the Board of Directors other than Directors appointed by Declarant and elect their successors. The revision of the budget or the recall of any members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all Unit Owners. The Board of Directors may, in any event, propose a budget to the Unit Owners at a meeting of members or by writing, and if that budget or proposed budget is approved by the Unit Owners at the meeting or by a majority of their whole number by writing, that budget shall not be reexamined by the Unit Owners in the manner hereinabove set forth nor shall the Board of Directors be recalled under the terms of this section. In determining whether assessments exceed 115 percent of similar assessments in prior years, there shall be excluded from the computation any provision for reasonable reserves made by the Board of Directors for repair or replacement of the Unit Property or for anticipated expenses by the Unit

Association which are not anticipated to be incurred on a regular or annual basis; and there shall be excluded from this computation assessment for betterments to the Unit Property, so long as these Bylaws so provide or allow the establishment of reserves or assessments for betterments to be imposed by the Board of Directors. However, so long as the Developer, as defined in the Declaration, is in control of the Board of Directors, the Board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of the majority of the Unit Owners.

6. Special Assessment Limitations. Pursuant to the authority granted to them by the Declaration, the Articles of Incorporation and these Bylaws, the Board of Directors has the power and authority to make, levy and collect special assessments for specified purposes; provided, however, that if any special assessments shall total in the aggregate \$5,000.00 for a single purpose or a series of related purposes, then that assessment must be approved by the members of the Association at a special meeting called for that purpose. Any assessment requiring the approval of the voting members of the Association must be approved by a majority of a quorum of voting members present in person or by proxy at that meeting.


**ARTICLE IX  
AMENDMENTS TO BYLAWS**

These Bylaws may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of members present in person or by proxy.

A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Bylaws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County.

**ATTEST:**

Certified to be the Bylaws adopted by consent of the Directors of Mountain Shadows Resort Homeowners' Association, Inc., dated September 20, 1996.

  
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ALLEN C. SHIRLEY  
Secretary

STATE OF TENNESSEE  
COUNTY OF SEVIER

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared ALLEN C. SHIRLEY, 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 Secretary of MOUNTAIN SHADOWS RESORT HOMEOWNERS' ASSOCIATION, INC., a Tennessee Non-Profit Corporation, the within named bargainer, and that he as such Secretary, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Secretary.

WITNESS my hand and Official Seal on this the 20<sup>TH</sup> day of SEPTEMBER, 1996.



*David H. Parfitt*  
Notary Public

My Commission Expires: 8-5-97