

**BYLAWS
OF
BACHELOR GULCH VILLAGE ASSOCIATION
EAGLE COUNTY, COLORADO**

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**BYLAWS
OF
BACHELOR GULCH VILLAGE ASSOCIATION**

**ARTICLE I
Definitions**

Each term in these bylaws with its first letter capitalized shall have the meaning defined for such term in these Bylaws or in the Declaration of Covenants, Conditions and Restrictions for Bachelor Gulch Village Association, as recorded or to be recorded in the real property records of Eagle County, Colorado ("the Declaration").

**ARTICLE II
Offices**

The principal offices of the Association shall be at 137 Benchmark Road, Avon, Colorado 81620. The Association may also have offices and may carry on its purposes at such other places within and outside the state of Colorado as the Board of Directors may from time to time determine.

**ARTICLE III
Membership, Voting, Quorum and Proxies**

3.1 **Membership.** The Members of the Association shall be as set forth in the Declaration.

3.2 **Voting Rights.** The voting rights of the Members shall be as set forth in the Declaration.

3.3 **Record Date.** The Board of Directors shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any other information or material, or in order to make a determination of Membership, for any purpose other than assessments which are provided for in Article VIII herein. The Members existing on any such record date shall be deemed Members for such notice, vote, meeting, furnishing of information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be less than 10 days nor more than 50 days prior to the date on which the particular action requiring determination of Membership is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which notice of such meeting is first given to any Member shall be deemed the record date for the meeting.

3.4 **Quorum.** Unless a greater level of approval is required by the Act, and except as otherwise provided in the Association Documents, the presence in person or by proxy of members of a class who are entitled to vote more than 10 percent of the total votes for the

members of such class shall constitute a quorum for such class where a vote by class is required (class quorum), and the presence in person or by proxy of members of any of the classes who are entitled to vote more than 10 percent of the votes of all of the different class members combined shall constitute a quorum where a vote by the combined classes is required (combined quorum). At any time that more than 1,000 Units exist in Bachelor Gulch Village, the quorum requirements set forth herein shall be increased as set forth in the Act.

3.5 Proxies. Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Member or his or her duly authorized attorney-in-fact. If a Membership is held by more than one person, the holder of each portion of the Membership allocated to a Unit may vote or register protest to the casting of votes by the other holders through a duly executed proxy. A Member may not revoke a proxy given pursuant to this Section 3.5 except by actual notice of revocation to the person presiding over a meeting of the Members. A proxy shall be void if it is not dated or purports to be revocable without notice. Except as provided in Article XI herein, no proxy shall be valid after the expiration of eleven months from the date of its execution, and every proxy shall automatically cease at such time as the Member granting the proxy no longer qualifies as a Member in the class of voting membership for which vote the proxy was given.

3.6 Majority Vote. At any meeting of Members where a vote by class is required, if a class quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the members of such class unless the vote of a greater number is required by law or the Association Documents. At any meeting of the combined members of all classes where a vote by class is not required, if a combined quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the combined class members, unless the vote of a greater number is required by law or the Association Documents.

ARTICLE IV
Property Rights and Rights
of Enjoyment of Common Elements and Functions

Each Member, Lessee, Guest and member of the general public shall be entitled to the use and enjoyment of Common Elements and Functions as set forth in the Declaration as from time to time in force and effect, subject to such Rules and Regulations as may be adopted by the Board of Directors from time to time.

ARTICLE V
Administration

5.1 Annual Meeting. The annual meeting of the Members shall be held during the month of December in each year, or on such other date designated by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in Colorado, such meeting shall be held on the next succeeding business day.

5.2 Special Meetings. Special meetings of any class of Members or the combined classes of Members, for any purpose, unless otherwise prescribed by statute, may be called by the president or by a majority of the Board of Directors, and shall be called by the president at the request of the Members entitled to vote 20 percent or more of the total votes of the affected class or of the combined classes of Members, as applicable.

5.3 Place of Meeting. The Board of Directors may designate any place within Eagle County, Colorado, as the place for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all Members entitled to vote at a meeting may designate any place within Eagle County, Colorado, as the place for such meeting. If no designation is made, or if a special meeting shall be called otherwise than by the Board of Directors, the place of meeting shall be the principal office of the Association in Avon, Colorado.

5.4 Notice of Meeting. Written or printed notice of any meeting of the Members stating the place, day and hour of the meeting, and the items on the agenda, including without limitation the general nature of any proposed amendment to the Association Documents, and budget changes and any proposal to remove an officer or director, shall be delivered personally or by mail to each Member entitled to vote at such meeting not less than ten nor more than 50 days before the date of the meeting. If mailed, such notice shall be deemed to be delivered three days after deposit in the United States mail, if sent by first class, registered or certified mail, addressed in the name of the Owner at such Owner's mailing address registered with the Association, with postage thereon prepaid. An Owner may change its mailing address from time to time by delivering written notice of such change of address to the secretary of the Association. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at corporate expense.

5.5 Informal Action by Members. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Members, and may be stated as such in any articles or document filed with the Secretary of State of Colorado.

5.6 Voting. In the election of directors, each Member shall have the right to vote as set forth in the Declaration. Each Member shall have the right to vote the number of votes to which he or she is entitled for as many persons as there are directors to be elected, and for whose election such Member is entitled to vote. Cumulative voting shall not be allowed.

ARTICLE VI

Board of Directors

6.1 Number, Tenure and Qualifications. The number, tenure and qualifications of the Board of Directors shall be as set forth in Art. VII of the Articles. After the Change in Control Date, the number of directors shall be decreased to five.

6.2 Resignations, Vacancies, Removal. (a) Resignation. Any director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the Board of Directors by reason of resignation, death, or an increase in the number of Class A, B or C directors shall be filled by majority vote of all of the directors then in office though less than a quorum. Any vacancy occurring in the Board of Directors by reason of resignation, death or on increase in the number of Class D directors shall be filled by the vote of the Class D Member. A director elected to fill such a vacancy shall be elected to serve until the expiration of the term of his or her predecessor. Any vacancy occurring in the Board of Directors by reason of resignation, death, or an increase in the number of Declarant directors shall be filled by appointment by the Declarant. A director appointed to fill such a vacancy shall serve until the expiration of the term of his or her predecessor.

(b) Removal. One or more or all of the Class A, B or C directors may be removed with or without cause by the vote of a majority of the votes of the class of Members entitled to vote at an election of such director(s) being removed. Vacancies for the Class A, B and C directors shall be filled only by the vote of the Members so represented, as if such meeting were a regular annual meeting for the election of directors, and the person or persons having the highest number of votes in consecutive order being declared elected to the Board of Directors. Class D directors or Declarant directors may be removed only by the Class D Member or the Declarant, respectively, with or without cause. Class D directors' vacancies shall be filled by the vote of the Class D Member. Declarant directors' vacancies shall be filled by appointment of the Declarant.

6.3 General Powers. (a) General. Except as provided in the Association Documents, the Board of Directors may act on behalf of the Association in all instances.

(b) Exceptions. The Board of Directors may not act on behalf of the Association to:

- (i) amend the Declaration,
- (ii) terminate the Association,
- (iii) elect directors, other than to fill a vacancy for the unexpired portion of any term, or
- (iv) determine the qualifications, powers and duties, or terms of office of directors.

6.4 Delegation. (a) Executive Committee. The Board of Directors may, by resolution adopted by unanimous consent, designate no less than three of their number to constitute an executive committee which shall have and exercise all of the power of the Board of Directors in the management of the business and affairs of the Association or such lesser

authority as may be set forth in such resolution. No such delegation of authority shall relieve the Board of Directors or any director from any responsibility imposed by law.

(b) **Special Requirements.** If the Board of Directors or an executive committee delegates powers of the board or the Association's officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a managing agent:

(i) such other persons or managing agent shall maintain fidelity insurance coverage or a bond in an amount not less than \$50,000 or such higher amount as the Board of Directors may require from time to time;

(ii) such other persons or managing agent shall maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by such persons or agent, and shall maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and

(iii) an annual accounting for Association funds and a financial statement shall be prepared and presented to the Association by the managing agent, a public accountant or a certified public accountant.

6.5 Additional Powers and Responsibilities. In addition to its general powers, the Board of Directors shall have the authority and the responsibility, acting through the Association's officers, and subject to the provisions of the Declaration:

(a) to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Association Documents;

(b) to establish, make, amend, publish and enforce compliance with such reasonable Rules and Regulations governing the operation and use of the Common Elements and Functions and the personal conduct of the Members, Lessees, Guests and members of the general public, and to establish, make, amend, publish and enforce payment of reasonable charges for the use of Common Elements and Functions;

(c) to maintain in good order, condition and repair the Common Elements and all items of personal property used in the enjoyment of such property;

(d) to obtain and maintain insurance in connection with Common Elements and related personal property in the manner and the amounts provided in the Declaration, and such other insurance as the Board of Directors may consider appropriate;

(e) to fix, determine, levy and collect Common Assessments, Civic Assessments, Real Estate Transfer Assessments, Default Assessments and Special Assessments to meet the Common Expenses and other costs of the Association, and to create a reasonable reserve therefor, as more fully set forth in Article IX hereof;

(f) to collect promptly all delinquent assessments by suit or otherwise, and to enjoin or seek damages from a Member, Lessee, Guest or member of the general public;

(g) to collect the charges and fees set forth in the Declaration (including but not limited to those set forth in Sections 3.18 and 3.19 thereof), and otherwise provided for in the Association Documents;

(h) to issue, or cause an appropriate officer to issue, upon written demand of any Member a certificate setting forth whether any assessment, charge, fine or penalty has been paid by such Member. Such certificate shall be conclusive evidence against the Association for all purposes. The Association may charge a reasonable fee for such certificate;

(i) to protect and defend the Common Elements from loss and damage by suit or otherwise;

(j) to borrow funds in order to pay for any expenditure or outlay authorized by the Association Documents, including but not limited to funds borrowed from the Declarant or an affiliate thereof, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable, and to invest funds of the Association in a prudent manner;

(k) to make guaranties or put up collateral respecting securities, indebtedness, notes, interest, contracts or other obligations created by any individual, partnership, association, special district, corporation or other entity, and to secure such guaranties and third party obligations (including, without limitation, any obligations related to gondola systems) by encumbrance upon any and all assets of the Association, including without limitation collected or uncollected assessments, to the extent that any such guaranty or third party obligation is made in pursuance of the purposes of the Association set forth in the Articles;

(l) to enter into contracts within the scope of their duties and powers;

(m) to establish one or more bank accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Board of Directors;

(n) to maintain full and accurate books and records showing all of the receipts, expenses or disbursements of the Association. Any Member may inspect such records upon reasonable notice at any reasonable time;

(o) to prepare and upon request deliver to any requesting Member an annual statement showing all receipts, expenses or disbursements since the last such statement; and

(p) to employ a manager for the Association or any Association property or Common Elements, at a compensation established by the Board of Directors to

perform such duties and services as the Board of Directors shall authorize, which manager may be the Declarant, any Owner or any third party.

6.6 Compensation. By resolution of the Board of Directors, any director may be paid any one or more of the following: his or her reasonable expenses incurred, if any, in furtherance of the business or affairs of the Association; a fixed sum for attendance at meetings; or a stated salary as director. No such payment shall preclude any director from serving the Association in any other capacity and receiving reasonable compensation therefor.

6.7 Regular Meetings. Regular meetings of the Board of Directors may be held without call or formal notice at such places within the state of Colorado, and at such times as the board may from time to time by vote determine. Any business may be transacted at a regular meeting. Until further determination, the regular meeting of the Board of Directors for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Members, or any special meeting of Members at which a Board of Directors is elected.

6.8 Special Meetings. Special meetings of the Board of Directors may be held at any place within Colorado at any time when called by the president, or by four or more directors, upon at least three days' prior notice of the time and place thereof being given to each director by leaving such notice with him or her or at his or her residence or usual place of business, or by mailing or telegraphing it prepaid, and addressed to him or her at his or her post office address as it appears on the books of the Association, or by telephone or telecopy, at the telephone or telecopy numbers that appear on the books of the Association. Notices shall state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required.

6.9 Quorum. The presence at the beginning of the meeting of persons entitled to cast fifty percent or more of the votes on the Board of Directors shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the directors in attendance shall, except where a larger number is required by law or by the Association Documents, decide any question brought before such meeting.

6.10 Waiver of Notice. Before, at or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be a waiver of notice by such director except when a director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.11 Informal Action by Directors. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors entitled to vote with respect to the

subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the directors.

6.12 Meetings by Telephone. Unless otherwise provided by the Articles, one or more of the directors or any committee thereof may participate in a meeting of the Board of Directors or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

6.13 Majority Vote. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by the Act or by the Association Documents.

ARTICLE VII Officers and Agents

7.1 General. The officers of the Association shall be a president, one or more vice presidents, a secretary and a treasurer, to be appointed by the Board of Directors. The secretary and/or the treasurer may also serve as vice presidents. The Board of Directors may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms, not exceeding three years, and have such authority and duties as from time to time may be determined by the Board of Directors. All members of the Design Review Board shall automatically be deemed appointed as assistant secretaries of the Association for the duration of their respective terms on the Design Review Board. The salaries of all the officers of the Association shall be fixed by the Board of Directors. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. The president must be a director. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Board of Directors, such officer, agent or employee shall follow the orders and instructions of the president or the president's designee.

7.2 Removal of Officers. Upon an affirmative vote of a majority of the Board of Directors, any officer may be removed, whenever in the directors' judgment the best interests of the Association will be served thereby, and such officer's successor appointed at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

7.3 Vacancies. A vacancy in any office, however occurring, may be filled by the Board of Directors for the unexpired portion of the term.

7.4 President. The president shall be the chief executive officer of the Association, and shall chair the meetings of the Association when in attendance, unless he or she delegates such responsibility to another officer. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers,

agents and employees. The president or any vice president shall execute amendments to the Declaration on behalf of the Association.

7.5 Vice Presidents. The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board of Directors. In the absence of the president, the vice president designated by the Board of Directors or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties. The president or any vice president shall execute amendments to the Declaration on behalf of the Association.

7.6 Secretary. The secretary shall:

(a) keep the minutes of the proceedings of the Members, any executive committee and the Board of Directors;

(b) see that all notices are duly given in accordance with the provisions of the Association Documents and as required by law;

(c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board of Directors;

(d) keep at its registered office or chief place of business within or outside Colorado a record containing the names, registered addresses and telephone numbers and, if applicable, telecopy numbers, of all Members, the designation of the Unit owned by each Member and, if such property is mortgaged and the mortgagee has given the Association notice thereof, the name and address of the mortgagee;

(e) prepare, certify and record amendments to the Declaration on behalf of the Association; and

(f) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to the secretary by the president or by the Board of Directors. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

7.7 Treasurer. The treasurer shall be the chief financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board of Directors. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Board of Directors, shall make such reports to it as may be required at any time. The treasurer shall have such other powers and perform such other duties as may be

from time to time prescribed by the Board of Directors or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

7.8 **Surety Bonds.** The Board of Directors may require any officer or agent of the Association to execute to the Association a bond in such sums and with such sureties as shall be satisfactory to the board, conditioned upon the faithful performance of such person's duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Association.

ARTICLE VIII

Obligations of the Members

8.1 **Assessments.** (a) **Common Assessment.** Each Owner shall be obligated to pay and shall pay to the Association the annual Common Assessment levied under Article IX with respect to such Owner's Unit, and each Owner shall comply with any determinations made by the Board of Directors with respect to such assessments.

(b) **Civic Assessment.** Each Member shall be obligated to and shall collect the Civic Assessment described in Article IX and pay the total amounts thereof regularly to the Association, or ensure that the Civic Assessment is collected and that the total amounts thereof are paid regularly to the Association as to any transaction with respect to which the Civic Assessment is applicable, and each Member shall comply with any determinations made by the Board of Directors with respect to such assessments.

(c) **Other Assessments.** Each Member shall be obligated to pay and shall pay to the Association any Real Estate Transfer Assessment, Default Assessment and/or Special Assessment imposed under Article IX hereof, as the amount of such Real Estate Transfer Assessment, Default Assessment and/or Special Assessment applicable to each Member is determined under the provisions of that Article. Each Member shall comply with any determinations made by the Board of Directors with respect to such assessment.

(d) **Charges, Fines, Etc.** Each Member shall pay all charges, fines, penalties, interest, or other amounts payable to the Association in connection with the Common Assessments, Civic Assessments, Real Estate Transfer Assessments, Default Assessments or Special Assessments, or otherwise payable under the Association Documents.

8.2 **Time for Payments.** The amount of any assessment, charge, fine, penalty or other amount payable with respect to any Member or such Member's Lessees, Guests or Unit shall become due and payable as specified in Article IX hereof or by the Board of Directors, and any such amount which is delinquent shall bear interest at the rate of 18 percent per annum, or such other rate as may be set by the Board of Directors from time to time not to exceed 21 percent per annum, from the date due and payable.

8.3 Lien for Assessments and Other Amounts. In addition to the rights set forth in Article IX hereof, pursuant to Section 38-33.3-316 of the Act as from time to time in force and effect, the Association shall have a lien against each Unit to secure payment of any assessment, charge, fine, late charge, penalty, interest and attorneys' fees, disbursements and costs of collection imposed against its Owner under any Association Document, with respect to the Owner of that Unit, or with respect to such Owner's Lessees, Guests or Unit, plus interest at the rate of 18 percent per annum, or such other interest rate as may from time to time be established by the Board of Directors (not to exceed 21 percent per annum), which shall accrue from the date such charge was due and payable. The terms and priorities of this lien shall be as set forth in Section 38-33.3-316 of the Act, and in Section 5.4 of the Declaration. The Board of Directors, in cases of extreme hardship, may release any such lien if it receives other security for the payment of the delinquent assessment (or other charge) which it deems sufficient to protect the interests of the Association.

8.4 Compliance with the Association Documents and Rules and Regulations. Each Member, Lessee and Guest, as well as each member of the general public, shall comply with all provisions of the Association Documents and any Rules and Regulations issued by the Association or its Design Review Board as from time to time in force and effect. The Board of Directors may impose appropriate fines and/or sanctions against the delinquent Member and/or the Membership rights and privileges, or against any member of the general public. Such sanctions may include without limitation, suspending the right to vote and/or the right of any Member, Lessee, Guest or visitor to use and enjoy the Common Elements and Functions, during the period when any assessments, charges, fees, fines, or other amounts due relating to such Member's Unit remain unpaid; but, upon payment in full of such assessments, charges, fees, fines or other amounts, including all late charges, penalties, interest, attorneys' fees, disbursements and costs of collection, such rights and privileges shall be automatically restored. If the Association has adopted and published Rules and Regulations governing the use of Common Elements or Functions and the personal conduct of any person related thereto, any director or any officer of the Association may, in his or her discretion, suspend the right of any person violating such rules to use and enjoy the Common Elements and Functions for a period not to exceed 30 days, or if such person is in a continuous violation of such Rules and Regulations for a period until such time as the violation ceases. At the time such continuous violation ceases, the 30-day suspension may be applied to such person.

8.5 Amendments. This Article VIII may be amended only by the Affirmative Vote of a Majority of the Classes.

ARTICLE IX

Assessments

9.1 Common Assessments. (a) Levy and Collection. (i) The Board of Directors, on or about May 1 of each year, shall levy upon and subsequently collect from each Owner an annual assessment (the "Common Assessment") which shall be determined by multiplying (1) the assessed value of all real property located within and improvements located on or affixed to each of such Owner's Unit, as such value shall have been most recently

determined by the Assessor of Eagle County, Colorado (the "Assessed Valuation"), times (2) the Common Assessment Rate determined by the Board of Directors in accordance with Section 9.8(a). Notwithstanding the foregoing, the Common Assessment shall be no less than \$500.00 per Unit.

(ii) To determine the Assessed Valuation of each Unit and the improvements thereon, the Board of Directors shall obtain a copy of the tax list and warrant covering and including all real property in Bachelor Gulch Village as soon as practicable after its publication by the Treasurer of Eagle County, Colorado on or about January 1 of each year. Notwithstanding the foregoing, if for any reason a current tax list and warrant is not available in a timely fashion or does not, in the judgment of the Board of Directors, provide sufficient information to determine the Assessed Valuations of one or more particular Units and all of the improvements thereon, the Board of Directors may use any reasonable means available to it to determine such Assessed Valuations for purposes of levying Common Assessments, including without limitation reference to previous county assessed value determinations and other pertinent information and the employment of qualified appraisers. Identification of Owners for the purpose of levying a Common Assessment shall be made in accordance with said tax list and warrant, except to the extent that the Board of Directors shall send by first class mail, postage prepaid, a notice or notices to each Owner at the address shown on said tax list and warrant, or at such other address of which the Board of Directors may have notice, setting forth the Assessed Valuation, the Common Assessment Rate and the Common Assessment relative to each Unit owned by such Owner. Payment of each Common Assessment shall become due and payable in its entirety on or before June 30 of the same year.

(iii) Notwithstanding subsections 9.1(a)(i) and (ii) above, at the time each Unit is created by the recording of a Plat, such Unit shall thereupon be subject to the Common Assessment, and the Board of Directors shall levy such assessment upon the Owner of the Unit within 30 days after the recording of such Plat. If applicable, the assessment shall be prorated for the remaining portion of the assessment year, and shall be due and payable in its entirety within 45 days after the recording of such Plat.

(iv) At the time that any Common Assessment is to be levied, if there is no Assessed Valuation for such Unit, the Treasurer shall determine in a fair and equitable manner, the value of such Unit to be used to calculate the Common Assessment, taking into consideration, among other things, the latest Assessed Valuation for the portion of the Property that included the property within such Unit.

(b) **No Waiver.** The failure of the Board of Directors to levy a Common Assessment for any calendar year shall not be deemed a waiver, modification or release of the Owners' liability for Common Expenses.

9.2 Civic Assessments. The Board of Directors shall regularly levy upon and collect from each Member an assessment (the "Civic Assessment") in regard to all sales of (a) tangible personal property made by such Member or such Member's Lessee or made, consummated, conducted, transacted or occurring within the geographical boundaries of

Bachelor Gulch Village, and services made, performed or rendered by or on behalf of such Member or such Member's Lessee within the geographical boundaries of Bachelor Gulch Village, but excluding all sales that are subject to assessment by the Beaver Creek Resort Company of Colorado pursuant to the Agreement Regarding Assessments, dated November 27, 1994, between The Vail Corporation d/b/a Vail Associates, Inc. and Beaver Creek Resort Company of Colorado (all sales which are subject to Civic Assessment shall be referred to herein as "Local Sales") which are subject to the Colorado Emergency Retail Sales Tax Act of 1935 (Colorado Revised Statutes, 1973, Title 39, Article 26), as amended (the "Tax Act"); and (b) other tangible personal property made, consummated, conducted, transacted or occurring within the geographical boundaries of Bachelor Gulch Village. However, the Civic Assessment shall not apply to any gross receipts from sales in connection with (i) any event sponsored by the Association, or (ii) any event sponsored by an organization exempt from the provisions of the Tax Act, but only to the extent such gross receipts relate to purchases by the organization for official organization business that are therefore exempt from the provisions of the Tax Act. All taxes payable on Local Sales pursuant to the Tax Act shall be referred to hereinafter as the "Colorado Sales Tax". Each such Member's Civic Assessment shall be determined by multiplying (a) such Member's Local Sales that are included within such Member's or such Member's Lessee's Net Taxable Sales (as defined for purposes of the computation of the Colorado Sales Tax) plus such Member's or such Member's Lessee's gross receipts from the sale of tangible personal property not covered by the Colorado Sales Tax, times (b) the Civic Assessment Rate determined by the Board of Directors in accordance with Section 9.8(b). Each such Member's Civic Assessment shall be due and payable without notice to the Association each time and at such time as such Member or such Member's Lessee is required to remit or pay Colorado Sales Tax to the state of Colorado. Each such Member shall also deliver to the Association without notice true and complete copies of all written reports, returns, statements, records and declarations, including any supplements or amendments thereto (all of which are referred to herein as "Reports") made or provided to the state of Colorado by such Member or such Member's Lessee in connection with any Local Sales under the provisions of the Tax Act at such time as such Reports are required to be made to the state of Colorado. If any subsequent adjustments, additions or modifications are made to any Colorado Sales Tax remitted or paid or Report made by any Member or such Member's Lessee to the state of Colorado, such Member shall within 30 days thereafter so notify the Association and provide it with true and complete copies of all Reports or other written material issued or received by such Member or such Member's Lessee in regard thereto. If any adjustment increases the amount of Colorado Sales Tax a Member or such Member's Lessee is required to remit or results in a refund of such tax, such Member shall accordingly pay an appropriate additional Civic Assessment or receive an appropriate refund from the Association of any excess Civic Assessments previously paid.

9.3 Real Estate Transfer Assessments.

(a) **Assessable Transfers.** Upon the occurrence of any transfer, as defined below, the transferee under such transfer shall pay to the Association a real estate transfer assessment (the "Real Estate Transfer Assessment") equal to the fair market value, as defined below, of the Unit subjected to transfer, multiplied by the Real Estate Transfer Assessment Rate determined in accordance with Section 9.8(c).

(b) **Definitions.**

(i) **Transfer.** For purposes of this Section 9.3, "transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Unit, including but not limited to (A) the conveyance of fee simple title to any Unit, (B) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation (other than Declarant) which, directly or indirectly, owns one or more Units, and (C) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Units, but "transfer" shall not mean or include the transfers excluded under paragraph 9.3(c).

(ii) **Transferee.** For purposes of this Section 9.3, "transferee" means and includes all parties to whom any interest passes by a transfer, and each party included in the term "transferee" shall have joint and several liability for all obligations of the transferee under this Section 9.3.

(iii) **Fair Market Value.** In the case of a transfer that is in all respects a bona fide sale, "fair market value" of the Unit subjected to transfer shall be the consideration, as such term is defined below, given for the transfer. In the case of a transfer that is a lease or is otherwise not in all respects a bona fide sale, fair market value of the Unit subjected to transfer shall be determined by the Association. A transferee may make written objection to the Association's determination within 15 days after the Association has given notice of such determination, in which event the Association shall obtain an appraisal, at the transferee's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Colorado, who is familiar with Eagle County real estate values, and who shall be selected by the Association. The appraisal so obtained shall be binding on both the Association and the transferee. The above provisions to the contrary notwithstanding, where a transferee does not make a full report of a transfer within 15 days after the time required by this Section 9.3 for making such report, the transferee shall be deemed to have waived all right of objection concerning fair market value, and the Association's determination of such value shall be binding.

(iv) **Consideration.** For purposes of this Section 9.3, "consideration" means and includes the total of money paid and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of any Unit, and includes any money or property paid or delivered to obtain a contract right to purchase any Unit, and the amount of any note, contract indebtedness (including without limitation, obligations which could be characterized as contingent land gain), or rental payment reserved in connection with such transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the transfer price, or any part thereof, or remaining unpaid on the property at the time of transfer, whether or not assumed by the transferee. The term "consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the state of Colorado, or a municipal or quasi-municipal governmental corporation or district.

(c) **Exclusions.** The Real Estate Transfer Assessment shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Real Estate Transfer Assessment:

(i) any transfer to the United States, or any agency or instrumentality thereof, the state of Colorado, any county, city and county, municipality, district or other political subdivision of this state;

(ii) any transfer to a Declarant, the Association or the successors of such entities;

(iii) any transfer, whether outright or in trust, that is for the benefit of the transferor or his or her relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust;

(iv) any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith;

(v) any transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution;

(vi) any transfer made (A) by a majority-owned subsidiary to its parent corporation or by a parent corporation to its majority-owned subsidiary, or between majority-owned subsidiaries of a common parent corporation, in each case for no consideration other than issuance, cancellation or surrender of the subsidiary's stock; or (B) by a partner, member or a joint-venturer to a partnership, limited liability company or a joint venture in which the partner, member or joint venture has not less than a 50 percent interest, or by a partnership, limited liability company or joint venture to a partner, member or joint venture holding not less than a 50 percent interest in such partnership, limited liability company or joint venture, in each case for no consideration other than the issuance, cancellation or surrender of the partnership, limited liability company or joint venture interests, as appropriate; or (C) by a corporation to its shareholders, in connection with the liquidation of such corporation or other distribution of property or dividend in kind to shareholders, if the Unit is transferred generally pro rata to its shareholders and no consideration is paid other than the cancellation of such corporation's stock; or (D) by a partnership, limited liability company or a joint venture to its partners, members or joint venturers, in connection with a liquidation of the partnership, limited liability company or joint venture or other distribution of property to the partners, members or joint venturers, if the Unit is transferred generally prorata to its partners, members or joint venturers and no consideration is paid other than the cancellation of the partners', members' or joint venturers'

interests; or (E) to a corporation, partnership, limited liability company, joint venture or other association or organization where such entity is owned in its entirety by the persons transferring the Unit and such persons have the same relative interests in the transferee entity as they had in the Unit immediately prior to such transfer, and no consideration is paid other than the issuance of each such persons' respective stock or other ownership interests in the transferee entity; or (F) by any person(s) or entity(ies) to any other person(s) or entity(ies), whether in a single transaction or a series of transactions where the transferor(s) and the transferee(s) are and remain under common ownership and control as determined by the Board of Directors in its sole discretion applied on a consistent basis; provided, however, that no such transfer or series of transactions shall be exempt unless the Board of Directors finds that such transfer or series of transactions (1) is for no consideration other than the issuance, cancellation or surrender of stock or other ownership interest in the transferor or transferee, as appropriate, (2) is not inconsistent with the intent and meaning of this Subsection (vi), and (3) is for a valid business purpose and is not for the purpose of avoiding the obligation to pay the Real Estate Transfer Assessment. For purposes of this Subsection (vi) (F), a transfer shall be deemed to be without consideration (x) if the only consideration is a book entry made in connection with an intercompany transaction in accordance with generally accepted accounting principles, or (y) no person or entity which does not own a direct or indirect equity interest in the Unit immediately prior to the transfer becomes the owner of a direct or indirect equity interest in the Unit (an "Equity Owner") by virtue of the transfer, and the aggregate interest immediately prior to the transfer of all Equity Owners whose equity interest is increased on account of the transfer does not increase by more than 20 percent (out of the total 100 percent equity interest in the Unit), and no individual is entitled to receive directly or indirectly any consideration in connection with the transfer. In connection with considering any request for an exception under this Subsection (vi)(F), the Board of Directors may require the applicant to submit true and correct copies of all relevant documents relating to the transfer and an opinion of the applicant's counsel (such opinion and counsel to be reasonably acceptable to the Board of Directors) setting forth all relevant facts regarding the transfer, stating that in their opinion the transfer is exempt under this Subsection (vi)(F), and setting forth the basis for such opinion;

(vii) any transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of Units between Declarant and any original purchaser from Declarant of the one or more Units being transferred to Declarant in such exchange. To the extent that consideration in addition to previously purchased Units is paid to Declarant in such an exchange, the additional consideration shall be a transfer subject to assessment. To the extent that Declarant, in acquiring by exchange Units previously purchased from Declarant, pays consideration in addition to transferring Units, the amount of such additional consideration shall be treated as reducing the original assessable transfer and shall entitle an original purchaser from Declarant, who exchanges with Declarant Units previously purchased from Declarant, to a refund from the Association of the amount of the transfer assessment originally paid on that portion of the original transfer;

(viii) any transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a

condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable transfer in a series of transactions which includes only one effective transfer of the right to use or enjoyment of a Unit;

(ix) any lease of any Unit (or assignment or transfer of any interest in any such lease) for a period of less than thirty years;

(x) any transfer solely of minerals or interests in minerals;

(xi) any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure;

(xii) the subsequent transfer(s) of a Unit involved in a "tax free" or "tax deferred" trade under the Internal Revenue Code wherein the interim owner acquires property for the sole purpose of reselling that property within 30 days after the trade. In these cases, the first transfer of title is subject to Real Estate Transfer Assessment and subsequent transfers will only be exempt as long as a transfer assessment has been paid in connection with the first transfer of such Unit in such exchange;

(xiii) the transfer of a Unit to an organization which is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, as amended (or any comparable statute), provided that the Board of Directors specifically approves such exemption in each particular case;

(xiv) any transfer made by a corporation or other entity, for consideration, (1) to any other corporation or entity which owns 100 percent of its equity securities (a "Holding Company"), or (2) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, 100 percent by such Holding Company;

(xv) any transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such transfer; however, unless such transfer is otherwise exempt, such exemption shall apply only to the extent of the direct or indirect beneficial interest of the transferee in the transferor immediately prior to the transfer. For example, if corporation A owns 60 percent of corporation B, and corporation B owns 100 percent of corporation C and corporation C conveys a Unit to corporation A for \$2,000,000, 60 percent of the Real Estate Transfer Assessment would be exempt and a Real Estate Transfer Assessment would be payable only on \$800,000 (i.e., 40 percent of the \$2,000,000 consideration); and

(xvi) the consecutive transfer of a Unit wherein the interim owner acquires such Unit for the sole purpose of immediately reconveying such Unit, but only to the extent there is no consideration to the interim owner and such interim owner receives no right to use or enjoyment of such Unit, provided the Board of Directors specifically approves such

exemption in each particular case. To the extent that consideration is paid to, or for the benefit of, the interim owner, the additional consideration shall be a transfer subject to assessment. In these cases, the first transfer of title is subject to the Real Estate Transfer Assessment and subsequent transfers will only be exempt as long as a transfer assessment has been paid in connection with the first transfer of such Unit in such consecutive transaction and only to the extent there is no consideration to the interim owner.

(d) **Payment and Reports.** The Real Estate Transfer Assessment shall be due and payable by the transferee to the Association at the time of the transfer giving rise to such Real Estate Transfer Assessment. With such payment the transferee shall make a written report to the Association on forms prescribed by the Association, fully describing the transfer and setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the legal description of the Unit transferred, and such other information as the Association may reasonably require.

9.4 **Default Assessments.** (a) **Levy.** Notwithstanding anything to the contrary contained herein, if any expense of the Association is caused by (i) the negligence or misconduct of an Owner or an Owner's family member, employee, Lessee, Subowner, agent or Guest, or (ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's family member, employee, Lessee, Subowner, agent or Guest, the Association shall, if it deems necessary or advisable, levy an assessment against such Owner's Unit. Any such assessment levied by the Association, and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document, are each referred to herein as a "Default Assessment."

(b) **Notice/Collection.** With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments when required by the Association.

9.5 **Special Assessments.** Special Assessments shall include Association Assessments, Local Improvement Assessments and Reconstruction Assessments as those terms are used below. They shall be imposed as provided in this Section 9.5 and shall be collected by the Association.

(a) **Association Assessments.** The Board of Directors may levy in any fiscal year one or more Association Assessments, applicable to that year only, for any proper purpose of the Association, provided that each such assessment shall be approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all Members at least 30 days in advance (unless each Member waives such notice). Any such assessment which is so approved shall be levied in proportion to each Member's total Common and Civic Assessment contributions to the Association for the previous fiscal year; however, if no such contributions were made in the previous fiscal year, such Association Assessment may be levied in such proportion as is determined by the Board of Directors. The date or dates that any such Association Assessment is

due and payable shall be set forth in the resolution of the Board of Directors authorizing such Association Assessment.

(b) Local Improvement Assessments.

(i) Local Improvements. In the judgment of the Board of Directors, if certain improvements within Bachelor Gulch Village are desirable, if those improvements will especially benefit certain Units, and if all or part of the costs of those improvements should in fairness be paid for by the Owners of the benefited Units, the Board of Directors may propose a Local Improvement Assessment. With respect to each proposed Local Improvement Assessment, the Board of Directors shall specify the nature of the proposed improvement, shall designate those Units which will be especially benefited by the improvement (the "Benefited Units"), and shall recommend a Local Improvement Assessment calculated to meet the costs applicable to the local improvement, with the board specifying the amounts of such assessments, the dates for payment of such assessments, and the portion, if any, of the costs of any improvement that will be borne by the Association. The Local Improvement Assessment shall then be submitted to a vote of the Owners of the Benefited Units, at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to the Owners of the Benefited Units at least 30 days in advance (unless each such Owner waives such notice). If a majority of the Owners of the Benefited Units approve the Local Improvement Assessment at such a meeting, the Local Improvement Assessment shall take effect.

(ii) Apportionment of Local Improvement Assessments.

Local Improvement Assessments shall be assessed against the Owners of the Benefited Units in proportion to the benefits received. The Board of Directors shall make such assessments in proportion as the street frontage of each Benefited Unit is to the street frontage of all the Benefited Units, or in proportion as the land area of each Benefited Unit is to the land area of all the Benefited Units, or by any other method that the Board of Directors finds will result in assessments being equitable in proportion to benefits received.

(iii) Disposition of Funds Raised Through Local

Improvement Assessments. All funds collected through the imposition of a Local Improvement Assessment shall be applied to the costs of making, constructing and installing the local improvement for which such assessment was imposed, except that any funds remaining unspent upon completion of such improvement shall be returned to the Owners of the Benefited Units in the proportion on which such Units were assessed.

(c) Reconstruction Assessments. If the Common Elements shall be damaged, destroyed or condemned, the Association may levy a reconstruction assessment for the purpose of repair or reconstruction of the damaged, destroyed or condemned Common Elements. All such reconstruction assessments shall be equal to the net amount of the cost of repair or reconstruction of the damaged, destroyed or condemned Common Elements and shall be calculated by subtracting from the total cost of repair or reconstruction the sum of the insurance or net condemnation proceeds awarded for the damage, destruction or condemnation thereof, if any. The Board of Directors shall prepare and provide to each Owner an itemized statement of

any reconstruction assessment against such Owner's Unit, which statement shall set forth in detail the various expenses for which the reconstruction assessment is being made. Such reconstruction assessments shall be due and payable as provided by resolution of the Board of Directors, but not sooner than 30 days after written notice thereof; provided, however, that, in appropriate circumstances, the Association may proceed directly against any Owner pursuant to Sections 9.5(b) and 9.4 for any such amount.

(d) **Capital Assessments.** The Board of Directors may levy one or more Capital Assessments, as a Membership contribution to the capital of the Association, for specified capital purposes, to be payable by the Owners in one or more installments over such period of time as the Board of Directors deems necessary or appropriate, provided that each such assessment shall be approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all Members at least 30 days in advance (unless each Member waives such notice). With respect to each proposed Capital Assessment, the Board of Directors shall specify the nature of the proposed capital purposes, which may include, without limitation, the acquisition, construction, alteration, repair and/or replacement of Common Elements or other Association property (real or personal). Any such assessment which is so approved shall be levied in proportion to each Member's total Common and Civic Assessment contributions to the Association for the previous fiscal year; however, if no such contributions were made in the previous fiscal year, such Capital Assessment may be levied in such proportion as is determined by the Board of Directors. The date or dates that any such Capital Assessment is due and payable shall be set forth in the resolution of the Board of Directors authorizing such Capital Assessment.

9.6 **General Provisions.** (a) **Exemptions.** Anything contained in this Article IX to the contrary notwithstanding, any Unit that is exempt from taxation pursuant to Title 39, Article 3 of the Colorado Revised Statutes as amended (or any comparable statute), or any property, real or personal, of the state of Colorado and its political subdivisions, may be granted an exemption from any assessment described in this Article IX by the Board of Directors in its discretion, on condition that the Board of Directors specifically approves such exemption in each particular case.

(b) **Delivery of Payments and Reports.** Any payment or Report required hereunder to be made to the Association shall be deemed to have been made in a timely manner if sent to the principal office of the Association by first class mail, postage prepaid, and postmarked no later than the date such payment or Report is due, provided the Association thereafter actually receives such payment or Report.

(c) **Right to Inspect.** The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Member which are reasonably related to such Member's obligations hereunder to pay assessments or make Reports to the Association.

(d) **Interest on Assessments.** If any portion of any assessment hereunder is not paid when due and payable, such portion shall bear simple interest at the rate of 18 percent per annum, or such other rate as may be set by the Board of Directors from time to time, from the date due until paid, and the amount of such interest shall for all purposes hereunder (other than the computation of such interest) be added to and become part of the assessment; provided that the Board of Directors may in its discretion waive all or any part of such interest for reasonable cause shown. The Board of Directors shall have power to collect any part of any assessment not paid when due and to enforce any other obligations of any Member under this Article IX by any legal means available to it.

(e) **Indemnification.** Each Owner and Member shall hold harmless and indemnify the Association and its agents and employees from and against any and all costs, losses, obligations, penalties, expenses, liabilities and damage of every kind whatsoever, including court costs and all reasonable attorneys' fees and disbursements, incurred by or imposed upon the Association or any of its agents or employees in the collection of such Owner's or Member's assessments hereunder which are not paid when due or otherwise in the enforcement of any of such Owner's or Member's obligations under this Article IX.

(f) **Disputes, Rules and Regulations.** The Board of Directors shall have power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any assessment or the making of any Report provided for in this Article IX, and may promulgate such additional Rules and Regulations which are consistent with the provisions hereof as the Board of Directors may deem necessary, useful or appropriate to the reasonable and efficient administration of such provisions.

9.7 **Association Budget.** At the first meeting of the Board of Directors following the adoption of the Association's fiscal year, the Board of Directors shall adopt a proposed budget for the remainder of that fiscal year. Such budget shall include: (i) the estimated Common Expenses, other costs and proposed capital expenditures which will be chargeable to the Association to fulfill its obligations under the Association Documents; (ii) the estimated income and other funds which will be received by the Association; and (iii) the estimated total amounts required to be raised by Common, Civic, Real Estate Transfer, Default and Special Assessments to cover such costs, expenses and capital expenditures of the Association and to provide a reasonable reserve. For each subsequent fiscal year the Board of Directors shall, prior to the beginning of each fiscal year, propose and tentatively adopt a similar proposed budget, which shall also include all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget. Within 30 days after adoption of any proposed budget for the Association, the Board of Directors shall, by first-class mail or otherwise, deliver to all Members a summary of the proposed budget and notice of the time and place of the meeting to consider ratification of the proposed budget. The date of the meeting shall be not less than 14 nor more than 60 days after delivery of the summary of the proposed budget to the Members. The proposed budget for any fiscal year shall be finally established at such meeting of the combined classes of all Members (whether or not a quorum is present), which may be the same meeting as the annual meeting of Members, unless sixty-seven percent or more of the Members present at such meeting reject the budget. In the

event the proposed budget is rejected, the periodic budget last ratified by the Members must be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors. Any Special Assessment proposed in the budget to become effective with final establishment of the budget shall be approved by the Members pursuant to Section 9.5 at such meeting. Special meetings may be held in like manner upon like notice to consider supplementation or revision of any budget. Notice of any such special meeting shall contain a reasonably detailed summary description of the supplement or revision proposed. Except as emergencies may require, the Association shall make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association through assessments, all other sources of income and borrowing.

9.8 Assessment Rates.

(a) **Common Assessment Rate.** Based on budget estimates and the most recently available Assessed Valuations of the Units, the Board of Directors shall determine and set forth in its annual budget, the Common Assessment Rate (referred to in Section 9.1) required to produce the total Common Assessments set forth in such budget. The initial Common Assessment Rate shall be 5 mills per dollar of Assessed Valuation for each Unit. The Board of Directors may not establish a Common Assessment Rate in excess of 15 mills per dollar of Assessed Valuation for any Unit for any period after January 1, 1996 unless such Common Assessment Rate has been approved by at least 75 percent of the Class A, B, C and D directors. Notwithstanding the foregoing, (i) if the state of Colorado or the County of Eagle, Colorado makes any material change in the manner in which real property taxes in Bachelor Gulch Village are assessed or collected, and such change diminishes the amount the Association would raise through Common Assessments, or (ii) if any court of competent jurisdiction renders any judgment or ruling which would affect the manner in which the Common Assessments are levied or collected, and such judgment or ruling diminishes the amount the Association would raise through Common Assessments, or (iii) if the implementation of any law(s) would diminish the amount the Association would otherwise raise through Common Assessments had such law(s) not been in effect, then, in any such event, the Board of Directors may establish a Common Assessment Rate in excess of 15 mills to the extent necessary to raise the same amount of money through Common Assessments as would have been raised at the 15 mill levy rate if such change, judgment, ruling or implementation had not occurred, or been issued or effected.

(b) **Civic Assessment Rate.** The Civic Assessment Rate referred to in Section 9.2 shall be five percent unless and until the Board of Directors shall adopt a different rate, provided that any such change shall not violate Section 207 of the Act and shall be approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all Members at least 30 days in advance (unless each Member waives such notice).

(c) **Real Estate Transfer Assessment Rate.** The Real Estate Transfer Assessment Rate referred to in Section 9.3 shall be two percent unless and until the Board of Directors shall adopt a different rate, provided that the Board of Directors shall not set a rate higher than three percent unless such rate is permitted pursuant to Section 207 of the Act and is

approved by the Affirmative Vote of a Majority of the Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all Members at least 30 days in advance (unless each Member waives such notice).

9.9 **Amendments.** This Article IX may not be altered, amended or repealed except by the Affirmative Vote of a Majority of the Classes.

ARTICLE X

Evidence and Determination of Membership, Registration of Mailing Address and Lien Holders

10.1 Evidence of Membership and Registration of Mailing Address.

(a) **Evidence of Membership.** Any party on becoming a Member shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that party with the interest required to make it a Member of the Association. Each such Member shall at the same time give a single name and address to which notices to such Member may be sent. The Member shall state in such notice that class of Membership to which it believes it is entitled, the number of votes to which it believes it is entitled and the basis for such determinations. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member shall give a new written notice to the Association containing all the information required to be covered by the original notice. As against any Member, and any party claiming by, through, or under such Member, the Association may, but shall not be obligated to, rely, for any and all purposes, on the information reflected in the most recent written notice furnished with respect to such Member. The Association shall keep and preserve the most recent written notice received by the Association with respect to each Member.

(b) **Organizational Members.** If title to any Unit is held by a corporation, partnership, limited liability company, association, trust or other legal entity (herein, "organizational member"), such organizational member shall from time to time designate to the Association, in writing, the name of a natural person authorized to exercise the Membership rights of such organizational member, including voting and the holding of elective office. The secretary of the Association shall maintain a list of the person entitled to vote and hold elective office on behalf of each organizational member, and until the Association is notified in writing to the contrary, any action taken by such person purporting to act on behalf of such organizational member shall be binding on such organizational member.

(c) **Registration of Address.** All owners of each Unit shall have one and the same registered mailing address to be used by the Association for mailing of notices, demands and all other communications. Such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, association or other legal entity or such combination thereof to be used by the Association. Such registered address of a Unit Owner or Owners shall be furnished by such Owners to the secretary of the Association within five days after transfer of title. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interest of all Owners thereof. If no such address is registered or if all the Owners cannot agree, then the

address of the Unit shall be deemed the registered address for the purposes of this section until another registered address is furnished as required under this section. If the Unit is the registered address of the Owners, then any notice shall have been deemed to be duly given if it is delivered to any person occupying that Unit, or, if such Unit is unoccupied, if the notice is posted at the unoccupied Unit or held and available for the Owners at the principal office of the Association. The registered address of any Owner may be changed from time to time by designation in accordance with this section.

10.2 Association Determination as to Membership. The Association, based upon written notices furnished by Members as aforesaid and based upon its own investigation, shall have the right, authority and obligation to fix and determine the number and class of votes existing with respect to each Member. The Association shall make such determination at least annually and, in any event, as of any record date and shall make supplemental determinations from time to time as may be necessary after any record date in the light of changes which may come to its attention. The Association shall keep records of its determinations hereunder which shall be used and may be relied upon by it for any and all purposes. No party shall be entitled to any notice or the right to vote until it has been determined by the Association that such party is a Member. Any party aggrieved by any determination of the Association with respect to its voting rights may contest such action within 45 days after it has notice thereof by commencing a legal action in the District Court of Eagle County, Colorado within such 45-day period. If such action is not commenced in such period, the determination of the Association shall be final.

10.3 Encumbrances by Member. Any Member who mortgages or grants a deed of trust covering his or her Unit may notify the Board of Directors of the name and address of the mortgagee or beneficiary of the deed of trust and may file conformed copies of the note and security instrument with the Board of Directors. Such notice, if filed, shall include any agreement by the lending institution that it will notify the Association when its lien has been released. If such notice has been filed, the Board of Directors, when giving notice to a Member of default in paying an assessment or other default, may (but shall not be obligated to) send a copy of such notice to each mortgagee or beneficiary of a deed of trust covering such Member's Unit whose name and address has theretofore been filed with the Association, and which has not been removed by appropriate notice that the lien has been released. However, failure to give such notice to a mortgagee shall not invalidate the notice to a Member.

10.4 Address of the Association. The address of the Association shall be 137 Benchmark Road, Avon, Colorado 81620. Such address may be changed from time to time upon written notice to all Members and all mortgagees or beneficiaries of deeds of trust whose names have been previously filed with the Association.

ARTICLE XI

Security Interest in Membership

To the extent permitted by the Act, Members shall have the right irrevocably to constitute and appoint the mortgagee or the beneficiary of a trust deed their true and lawful attorney-in-fact to vote in the Association at any and all meetings of the Association and to vest

in the mortgagee or the beneficiary any and all rights, privileges and powers that they have as Members under the Articles and these Bylaws or by the virtue of the Declaration as from time to time in force and effect. Such proxy and vesting shall become effective upon the filing of notice by the mortgagee or the beneficiary with the secretary of the Association at such time or times as the mortgagee or the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the Board of Directors or the Members to carry out their duties as set forth in the Declaration. A release of the mortgage or the beneficiary's deed of trust shall operate to revoke such proxy and vesting. Nothing contained in this Article XI shall be construed to relieve Members, as mortgagors, of their duties and obligations as Members or to impose upon the mortgagee or the beneficiary of the deed of trust the duties and obligations of an Owner.

ARTICLE XII

Design Review Board

The Association shall establish a Design Review Board consisting of five persons, in accordance with the Declaration, which shall have the duties and perform the functions described therein. Each Member and the Association shall be bound by the Design Review Board's Rules and Regulations, a copy of which shall be maintained in the records of the Association and available for inspection by Members at all reasonable times.

ARTICLE XIII

Amendments

13.1 **By Directors.** Except as limited or committed to action by the Members by law or the Association Documents, the Board of Directors shall have sole power to make, alter, amend and repeal the Bylaws at any regular meeting of the Board of Directors or at any special meeting called for that purpose at which a quorum is represented. However, if the Members shall make, alter, amend and/or repeal any bylaw, the directors shall not thereafter amend the same in such manner as to defeat or impair the objective of the Members in taking such action.

13.2 **By Members.** The Members may, by the Affirmative Vote of a Majority of the Classes, unless expressly made subject to a higher voting requirement by law or the Association Documents, make, alter, amend and repeal the Bylaws at any annual meeting or at any special meeting called for that purpose at which a combined quorum shall be represented.

ARTICLE XIV

Miscellaneous

14.1 **Seal.** The corporate seal of the Association shall be circular in form and shall contain the name of the corporation, the year of its organization and the words "Seal, Colorado."

14.2 Fiscal Year. The fiscal year of the Association shall be such as may from time to time be established by the Board of Directors.

The undersigned directors of the initial Board of Directors have adopted and executed these Bylaws this 1st day of AUGUST, 1996.

John P. Gzy
Chris MacArthur

Robert J. Miller

Edward D. Bucin

John M. ...

John N. Woodward

Kent R. Ross