

**BY-LAWS OF
THE RESERVE CONDOMINIUM OWNERS' ASSOCIATION, INC.**

1. IDENTITY.

A. These are the By-Laws of The Reserve Condominium Owners' Association, Inc., (herein "Association"), as incorporated under the laws of the State of North Carolina. It has been incorporated for the purpose of administering the operation and management of The Reserve at Sugar Mountain Condominium (herein "Condominium"), a Condominium established in accordance with the laws of the State of North Carolina upon property in Avery County, North Carolina, and described in Exhibit A of the Declaration, plus amendments, and incorporated herein by reference.

B. The provisions of these By-Laws are applicable to the Condominium, and the terms and provisions are hereof expressly subject to the terms, provisions, conditions and authorization contained in the Declaration which has been recorded in the Avery County, N.C. Public Registry (herein "the Public Registry").

C. All present or future owners, tenants, future tenants, or other employees, or any other person that might use the Condominium or any of the facilities thereof in any manner are subject to the regulations set forth in these By-Laws together with rules and regulations adopted by the Association and in the Declaration.

D. The office of the Association shall be at such place in North Carolina as the Board of Directors shall designate from time to time.

E. The fiscal year of the Association shall be the calendar year.

2. MEMBERSHIP, VOTING, QUORUM, PROXIES.

A. The Owners of all Condominium Units in the Condominium shall be members of the Association, and no other persons or entities shall be entitled to membership.

B. A quorum at meetings of the members shall consist of persons entitled to cast a majority of the votes of the entire membership. The joinder of a member in the action of a meeting by signing written concurrence thereto in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.

C. The vote of the Owners of a Condominium Unit owned by more than one person or by a corporation or other entity shall be cast by the one person named in a Certificate signed by all of the Owners of the Condominium Unit and filed with the Secretary of the Association, and such Certificate shall be valid until revoked by subsequent Certificate. If such a Certificate is not on file, the vote of such Owners shall not be considered for any purpose.

D. Approval or disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such Owner if in an Association meeting.

E. Except where otherwise required under the provisions of these By-Laws or

the Declaration of Unit Ownership, or whether the same may otherwise be required by law, the affirmative vote of the persons entitled to cast a majority of the votes at any duly called members meeting at which a quorum is present shall be binding upon the members.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP.

A. The Annual Members' Meeting shall be held at a time and place designated by the Board of Directors for the purpose of transacting any business authorized to be transacted by the members.

B. Special Members' Meetings shall be held whenever called by the President or Vice-president or by a majority of the Board of Directors and must be called by such Officers upon receipt of written request from members of the Association owning a majority of the Condominium Units.

C. Notice of all member's meetings, regular or special, shall be given by the President, Vice-president or Secretary of the Association, or other Officer of the Association in the absence of said Officers, to each member, unless waived in writing, such notice to be written and to state the time and place and purpose for which the meeting is called. Such notice shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting, which notice shall be mailed, emailed or delivered personally to each member within the same time. If emailed, such notice shall be deemed to be properly given when the email is sent to the member's current email address according to the association records and is not returned to sender as undeliverable. Proof of such emailing shall be given by the Affidavit of the person giving the notice. If delivered personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his post office address as it appears on the Register of Owners of the Association as of the date of the mailing of such notice, the postage thereon prepaid. Proof of such mailing shall be given by the Affidavit of the person giving the notice. Any member may, by signed written waiver or notice, waive such notice and, when filed in the records of the Association, whether before or after the holding of the meeting, such waiver shall be deemed equivalent to the giving of notice to the member. If any members' meeting cannot be organized because a quorum has not attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended (wherever the latter percentage of attendance may be required as set forth in these By-Laws or the Declaration of Unit Ownership) the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum, or the required percentage of attendance, if greater than a quorum, is present.

D. The order of business, as far as practical, at any member's meetings shall be:

- 1) Calling of the roll and certifying of proxies;
- 2) Proof of notice of meeting or waiver of notice;
- 3) Reading and disposal of any unapproved minutes;
- 4) Reports of Officers;
- 5) Reports of Committees;
- 6) Unfinished business;

- 7) New business; and
- 8) Adjournment.

4. BOARD OF DIRECTORS.

A. The initial Board of Directors of the Association and each succeeding Board of Directors shall consist of five (5) persons, with at least a majority being Unit Owners. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election.

B. Election of Directors shall be conducted in the following manner:

1) All members of the Board of Directors shall be elected by written ballots to be cast and tabulated prior to the annual meeting. Nominations shall be solicited, and information sheets filled out by all volunteer nominees shall be mailed ***or emailed*** to every member entitled to vote, along with a ballot, in sufficient time prior to the annual meeting for the results to be tabulated and announced at the annual meeting. ***If mailed, delivery of ballots and information sheets shall be deemed to be properly made when deposited in the United States Mail addressed to the member at his post office address as it appears in the association records as of the date of the mailing, the postage thereon prepaid. Proof of such mailing shall be given by Affidavit of the person accomplishing the mailing. If emailed, delivery of ballots and information sheets shall be deemed to be made when the email is sent to the member's current email address according to the association records and is not returned to sender as undeliverable. Proof of such emailing shall be given by Affidavit of the person sending the email.***

2) The initial Board shall serve until their successors at the first Annual Meeting of members are elected. Thereafter, each director shall serve for a period of two (2) years, except for two directors selected in the initial election who shall serve only one year, that being the second year of a two-year term. At all subsequent elections, two directors shall be elected in even years and three directors elected in odd years.

3) In the case of a contested election, the seats shall be awarded to the two or three candidates receiving the most votes.

4) Each elected Director shall hold office until his death, resignation, retirement, removal, disqualification, or until his successor is elected and qualifies.

5) In the election of Directors there shall be appurtenant to each Condominium Unit a total vote equal to the number of Directors to be elected multiplied by the Unit's appurtenant vote as set forth in the Declaration; provided, however that no member or Owner of one (1) Condominium Unit may cast a vote greater than the unit's appurtenant vote for anyone person nominated as a Director, so that voting for Directors shall be noncumulative. Declarant shall be entitled to cast the vote for each Condominium Unit owned by it. ***No member may be a candidate for the board of directors if that member currently has a previously billed assessment unpaid for 30 days or more.***

C. The organizational meeting of each newly elected Board of Directors shall be held within 10 days of the annual meeting at which their election is announced, at such time and

at such place as shall be fixed by the directors, and no further notice of the organizational meeting shall be necessary provided a quorum shall be present.

D. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile transmission or email, at least ten (10) days prior to the day named for such meeting, unless notice is waived.

E. Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board. Not less than three (3) days' notice of a meeting shall be given to each Director, personally or by mail, telephone facsimile transmission or email, which notice shall state the time, place and purpose of the meeting.

F. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

G. A quorum at a Directors' Meeting shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes cast at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as specifically otherwise provided in these By-Laws or the Declaration of Unit Ownership. If any Directors' meeting cannot be organized because a quorum has not attended or because the greater percentage of the Directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in these By-Laws or the Declaration of Unit Ownership, the Directors who are present may adjourn the meeting from time to time until a quorum, or the required percentage of attendance, if greater than a quorum, is present. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

H. Directors' fees, if any, shall be determined by the members.

I. All of the powers and duties of the Association shall be exercised by the Board of Directors, including those existing under the common law and statutes, these By-Laws and the Declaration and shall include, without limiting the generality of the foregoing, the following:

1) To make, levy and collect assessments against members and members' Condominium Units to defray the costs of the Condominium, as provided for in Article VI of the Declaration, which Article is herein incorporated by reference, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association.

2) To maintain, repair, replace, operate and manage the Common Areas and Facilities whenever the same is required to be done and accomplished by the Association for the benefit of its members; and further to approve any expenditure made or to be made for said purposes;

3) To reconstruct any part of the Common Property after casualty as provided

in the North Carolina Condominium Act, as amended (the Act), and to make further improvement to the Common Property, real and personal, and to make and to enter into any and all contracts necessary or desirable to accomplish said purposes;

4) To make, amend and enforce rules and regulations governing the use of the Common Property and Condominium Units so long as such rules and regulations or amendments thereto do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Declaration;

5) To acquire, operate, lease, manage and otherwise trade and deal with property, real and personal, including Condominium Units in the management of the Condominium, and in accomplishing the purposes set forth in the Declaration, provided that the acquisition of real property other than Condominium Units shall require the approval of the Association;

6) To acquire now or at any time hereafter, and to enter into leases and agreements whereby the Association acquires leaseholds, memberships, and other possessory or use interest in lands or facilities including, but not limited to, swimming pools, tennis and other recreational facilities, whether or not contiguous to the lands of the Condominium, to provide enjoyment, recreation or other use or benefit to the Owners of Condominium Units;

7) To contract for the management of the Condominium and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration or the Act to have the approval of the Board of Directors or membership of the Association.

8) To enforce by legal means or proceedings the provisions of the By-Laws of the Association, the Declaration and the rules and regulations hereinafter promulgated governing use of the Common Elements of the Condominium.

9) To pay taxes and assessments which are or may become liens against any part of the Condominium, other than Condominium Units and the appurtenance thereto, and to assess the same against the members and their respective Condominium Units subject to such liens;

10) To purchase insurance for the protection of the members, Directors and the Association against casualty and liability in accordance with the Declaration;

11) To pay all costs of power, water, sewer, and other utility services rendered to the Condominium and not billed to the Owners of the separate Condominium Units; and

12) To designate and employ personnel necessary for the maintenance, repair, replacement, and operation of the Condominium, including the Common Elements.

J. The undertakings and contracts authorized by the initial Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by an Board of Directors duly elected by the membership after the Declaration has been recorded, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association in accordance with all applicable condominium documents.

K. Any one or more of the members of the Board of Directors may be removed, either with or without cause, at any time by affirmative vote of the members owning a majority of the aggregate undivided interest in the Common Areas and Facilities of the Condominium, at any Special Meeting called for such purpose, or at the Annual Meeting.

5. OFFICERS.

A. The executive officers of the Association shall be a President, who shall be a Director, and a Vice-president, a Treasurer, a Secretary and an Assistant Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by a vote of the Directors at any meeting. Any person may hold two or more offices, except that the President shall not also be Vice-president, Secretary, or an Assistant Secretary. The Board of Directors shall, from time to time, elect such other officers and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association.

B. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the president of any association, including the power to appoint committees from among the members as he may determine appropriate to assist in the conduct of the affairs of the Association.

C. The Vice-president shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

D. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all Notices to the members and Directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring the seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the Directors or the President. The Assistant Secretary, if any, shall perform the duties of Secretary when the Secretary is absent.

E. The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidence of indebtedness. He shall keep, or supervise the keeping of, detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and identifying the maintenance and repair expenses of the common areas and facilities and any other expense incurred.

F. The compensation of all officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association, nor preclude the contracting with a Director or any company owned by him, for the management of the Condominium.

G. All officers shall serve at the pleasure of the Board of Directors and any officer may be removed from office at any time, with or without cause, by a majority vote of the Board of Directors.

6. FISCAL MANAGEMENT. The provisions for fiscal management of the Association set forth in the Declaration and Articles of Incorporation shall be supplemented by the following provisions:

A. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Condominium Unit. Such account shall designate the name and address of the Unit Owner or Owners, the amount of each assessment against the Owners, the dates and amounts in which assessments come due, the amounts paid upon the account and the balance due upon assessments.

B. The Board of Directors shall adopt a budget for each year which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following:

1) Common Expense Budget, which may include, without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of and capital improvements to the Common Property including landscaping, streets and walkways, office expenses, utility services, casualty insurance, liability insurance, administration and reserves (operating and Capital Improvement Replacement), management fees and costs of maintaining leaseholds, memberships, and other possessory use interest in land or facilities, whether or not contiguous to the lands of the Condominium, and to provide enjoyment, recreation or other use or benefit to the Unit Owners; and

2) Proposed assessments against each member and his Unit. Copies of the proposed budget and proposed assessments shall be transmitted to each member prior to January 1 of the year for which the budget is made. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each member concerned. Non-delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time in their sole discretion, to levy any additional assessments in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

C. The Board of Directors may retain professional management services to be primarily responsible for fiscal management of the Association and maintaining the Condominium. Any contract or lease, including, but not limited to any management agreement for the Condominium, shall be terminable by the Association with or without cause upon 90 days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods.

D. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Directors and in which the funds of the Association shall be deposited. Withdrawal of funds from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

E. The books and all supporting documentation shall be available for examination by all Unit Owners and their Lenders or their agents, during normal business hours.

F. Fidelity bonds shall be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors, but in no event be less than an amount equal to one-half (1/2) of the current annual budget, plus accumulated reserves. The premiums on such bonds shall be paid by the Association.

7. PARLIAMENTARY RULES. Roberts Rules of Order (latest edition) shall govern the conduct of Association proceedings when not in conflict with these By-Laws or with the General Statutes of the State of North Carolina.

8. AMENDMENTS TO BY-LAWS. Amendments to these By-Laws shall be proposed and adopted in the following manner:

A. Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by members of the Association owning a majority of the aggregate votes of the Condominium, whether meeting as members or by instrument in writing signed by them.

B. In order for such amendment to become effective, it must be approved by an affirmative vote of a majority of the members owning more than fifty (50) percent of the aggregate vote of the Condominium (if a larger *vote* is required to take or refrain from taking a specific action, no amendment shall be valid until the members owning such larger percentage execute the amending instrument). Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be recorded in the Public Registry within twenty (20) days from the date on which any amendments has been approved by the Directors and members. No amendment shall become effective until it is duly recorded in the Avery County, N.C. Public Registry.

C. Upon the approval and proper recording of any amendment, it shall become binding upon all Unit Owners.

D. At any meeting held to consider any amendment to the By-Laws, the written vote of any member of the Association not in attendance or represented there by proxy, shall be recognized *provided* such written vote is delivered to the Secretary of the Association at or prior to such meeting. Absent a meeting for that purpose, all amendments to the By-Laws shall be decided by written ballot delivered to each voting member. Only ballots returned and received within 20 days of mailing to the member shall be counted.

9. COMPLIANCE. These By-Laws are set forth to comply with the requirements of the North Carolina Condominium Act, Chapter 47C of the General Statutes of the State of North Carolina. In the event that any of these By-Laws conflict with the provisions of said statute, it is hereby agreed and accepted that the provisions of the statute will apply.