

BY-LAWS  
of the  
SMUGGLERS' NOTCH HOMEOWNERS' ASSOCIATION, INC.  
Adopted November 24, 1979  
(Amended November 13, 1982, July 4, 1987, July 2, 1994, July 2, 2006 and July 5, 2008)

ARTICLE I  
NAME AND LOCATION

The name of the corporation is Smugglers' Notch Homeowners' Association, Inc. The principal office of the Association shall be located at the Village at Smugglers' Notch, Jeffersonville, Vermont.

ARTICLE II  
SEAL

The Association's seal shall be in circular form and have inscribed thereon the name of the Association, the year of its incorporation "1969" and the words "Incorporated in Vermont". The seal shall be affixed by the President, Treasurer or Secretary to such contracts and instruments that are necessary to be sealed.

ARTICLE III  
DEFINITIONS

Section 1. "Association" shall mean and refer to Smugglers' Notch Homeowners' Association, Inc., its successors and assigns.

Section 2. "Developer" shall mean and refer to Smugglers' Notch Management Co., Ltd., and its assigns, together with any successor to all or substantially all of its business of developing and managing the Properties.

Section 3. "The Properties" shall mean and refer to all real property with improvements thereon titled in the name of the Owners and/or the Developer, including all common areas commonly known collectively as "The Village at Smugglers' Notch."

Section 4. "Common Area" shall mean and refer to those areas of land and improvements thereon comprising a part of the Properties which are intended to be devoted to the common use and enjoyment of the Members and Associate Members of the Association.

Section 5. "Unit" Shall mean and refer to any structure or portion of a structure situated on the Properties designated and intended for use and occupancy as a separate housekeeping unit, recorded as a property for title purposes in the land records of the Town of Cambridge, Vermont.

Section 6. "Owner" shall mean and refer to the owners of record of any Unit as disclosed in the Land Records of the Town of Cambridge, Vermont (whether one or more persons or entities, which collectively shall be deemed to be but one Owner), excluding, however, those having such interest merely as security for the performance of an obligation. The recorded title to a Unit shall be conclusive evidence as to its ownership. Recorded title may be by one (1) or more deeds.

Section 7. "Board" shall mean the Board of Directors of the Association.

Section 8. "Member" shall mean an Owner of a condominium, townhouse or detached dwelling unit located upon the Properties, other than Associate Members as defined below.

Section 9. "Associate Member": Each Owner of deeded or shareholder rights to enjoy a condominium, or townhouse located upon the Properties, which is subject to or participates in time sharing, deeded week ownership, incorporated club ownership, or other non-fee simple ownership shall be an Associate Member of the Association.

#### ARTICLE IV MEETING OF MEMBERS

Section 1. "Voting Rights". Each Member of the Association (irrespective of the number of Units owned) shall be entitled to one vote at all meetings of the Association. Each Associate Member shall be entitled to One Fiftieth of one vote for each week owned and/or each week the Associate Member is entitled to occupy one of the properties.

Section 2. Voting Members. If a Unit is owned by more than one person or entity, and has not been subjected to interval ownership of any kind, then the person entitled to cast the vote or votes arising out of ownership of the Unit shall be designated on a certificate signed by all of the owners of record constituting the Owner, which certificate must be filed with the secretary of the Association. If the Unit is owned by a Corporation, the officer or employee thereof entitled to cast the vote or votes for the Corporation arising out of ownership of the Unit shall be designated in a certificate for this purpose, signed by the president or vice president of the Corporation and attested to by the secretary or assistant secretary of the Corporation, and filed with the secretary of the Association. If a Unit is subject to interval ownership of any kind, then the vote or votes of the Associate Members arising out of ownership of that Unit shall be cast for each interval of ownership by those Associate Members whose names appear first on the deeds to their respective intervals of ownership of the Unit. However, all owners of a given interval of ownership may sign a certificate designating another person whose name appears of record as an owner of the interval of ownership as the voting Associate Member, which certificate shall take effect when filed with the secretary of the Association. The person designated in these certificates who is entitled to cast the vote or votes shall be known as the "Voting Member" and all members who are a Voting Member shall collectively be known as "Voting Members." Such certificates shall be valid until revoked in writing by any holder of such interest or until superseded by a subsequent certificate or until a change in the ownership (or tenancy) of the Unit concerned. If such a certificate is not on file with the

secretary of the Association for a Unit owned by more than one person or by a corporation, the vote or votes of that Owner shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the same, except if owned by a husband and wife. If a Unit is owned by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a Voting Member by a certificate signed by both and delivered to the Association secretary as provided above.

(b) If they do not so designate a Voting Member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote as an Owner on that subject at that meeting.

(c) Where they do not designate a Voting Member and only one is present at a meeting, the person present may cast the vote or votes as though he or she held the interest individually and without establishing the concurrence of the absent person.

The Board may waive any or all of the foregoing requirements regarding certificates and designations from time to time as the Board may deem appropriate.

Section 3. Notice of Ownership and Suspension of Voting Privilege. Each member shall give written notification to the Association of such person's ownership status and shall provide the Association with an address for the mailing of notices. No member shall be eligible to vote at any special or regular meeting of the Association if such person has failed to notify the Association of such member's ownership status as aforesaid, or if such person is more than 90 days delinquent in payments due the Association.

Section 4. Annual Meetings. (Amended 11/13/82) The annual meeting of the Association shall be held on that Saturday during the month of July of each year which is the Saturday nearest to the day designated as the July 4th, Independence Day, legal holiday for such year, or on such other reasonable day as the Board shall designate during the month of July of each year. The time of the meeting shall be at such reasonable time as the Board shall designate.

Section 5. Special Meetings. Special meetings of the Association may be called at any time by the president and shall be called as directed by resolution of the Board, or upon written request presented to the secretary stating the purpose for such meeting and the matters to be acted upon and signed by at least ten percent of the total votes which all members are entitled to cast at the particular meeting.

Section 6. Place of Meetings. Meetings of the Association shall be held at the Village at Smugglers' Notch, or at such suitable place as may be designated by the Board.

Section 7. Quorum. Ten percent or more of the members entitled to vote who are represented in person or by proxy shall constitute a quorum for the transaction of such business as is set forth in the notice of the meeting. Associate Members shall not be counted for the purpose of determining a quorum. Twenty-five percent or more of the members entitled to vote who are represented in person or by proxy shall constitute a quorum for the transaction of business not set forth in the notice of the meeting.

Section 8. Notice. Notice stating the place, day and hour of the meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be provided in writing not less than ten (nor more than fifty) days before the date of the meeting by personal service or by mailing a copy of such notice, first class postage prepaid, to all members entitled to vote at the address last appearing on the books of the Association or at such address as shall be supplied in writing by such member to the secretary of the Association for the purpose of notice. Notice of all meetings may be waived by any Owner by written waiver or by personal attendance thereat. Notice of the meeting and all other communications to Associate Members shall be sent only to the managing agent for each condominium or townhouse owned by Associate Members. The secretary shall send notice of the Annual Meeting of the Association to such managing agent(s) no less than thirty (30) days prior to the meeting and shall have no further responsibility to send notice to any individual Associate Member.

Section 9. Proxies. Each Member and each Associate Member who is entitled to vote may vote in person or by proxy. All proxies shall be in writing, signed by such Voting Member (or in the case of a husband and wife who have not designated a Voting Member, by both spouses) and filed with the secretary before the appointed time of each meeting. Every proxy shall be revocable at any time upon written notice to the secretary, and shall automatically cease after (11) months. Every proxy shall automatically cease when the secretary of the Association has received written notice of the death or judicially declared incompetency of the grantor of the proxy or the sale or other transfer by the member of his fee interest in the Unit.

Section 10. Voting Procedure. The vote of the majority (over fifty percent) of the membership who are present at any regular or special meeting in person or by proxy and entitled to vote thereat, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, Articles of Incorporation, or these By-laws, a different vote is required, in which case such express provision shall govern and control.

## ARTICLE V BOARD OF DIRECTORS

Section 1. Term. The business and affairs of the Association shall be managed by a Board, all of whom shall be members of the Association. Individuals and entities who are employed by or affiliated with, or whose spouses or other immediate family members are employed by or affiliated with Stanmar, Inc., Smugglers' Notch Management Co., Ltd., or any other corporation or business entity doing business at the

Village at Smugglers' Notch shall not be eligible to be members of the Board, unless elected by a two-thirds majority of the membership voting at an annual meeting.

Section 2. Composition. The Board shall consist of eleven [amended 7-5-08] directors, three or four shall be elected each year by the membership entitled to vote, and shall take office following their election and serve for a term of three years and until his or her successor shall be duly elected or appointed and shall qualify.

Section 3. Method of Nominating. The Board shall appoint a Nominating Committee to select candidates for the Board at least sixty days prior to the annual meeting of the Association (or at least thirty days prior to the mailing of ballots in the event the Board shall decide to conduct the election by mail). The Nominating Committee shall consist of at least three members (or such greater number as the Board may determine) at least two of whom shall be members of the Board. The Nominating Committee may make as many nominations as it, in its discretion, shall determine but there shall be at least as many candidates as there are vacancies on the Board to be filled. The Nominating Committee shall make every effort to nominate qualified candidates who, together with the incumbent directors, will be broadly representative of the various interests and needs of the membership and to the extent practicable, will be representative of the membership from each of the different types of Units constructed within the Village at Smugglers' Notch. If directors are to be elected at the annual meeting of the Association, additional nominations may be received from the floor at such meeting upon approval of a majority of the members present in person or by proxy and entitled to vote. The report of the Nominating Committee shall be presented to the Board at least thirty days prior to the annual meeting of the Association and the nominees so selected shall be announced to the membership at the time notice of the annual meeting is given to the members (or if the election is conducted by mail, at the time the ballots are mailed to the members).

Section 4. Method of Election. Elections to the Board shall be conducted at the annual meeting of the Association each year by voice vote, or upon the request of any member and the approval of the majority of the members present in person or by proxy and entitled to vote, by hand vote or on written ballot, as the case may be. The Nominating Committee shall adopt and carry out procedures which shall establish:

(a) that the number of votes of each member corresponds to the number of votes allowed to the member or his proxy;

(b) that the vote of the member or his proxy is genuine; and

(c) that a proxy has been filed with the secretary as herein provided if the vote is by proxy, and that such proxy is valid. Cumulative voting is not permitted. Those persons receiving the largest number of votes shall be elected.

Notwithstanding the foregoing, the Board may in its discretion determine (due to lack of attendance at annual meetings of the membership or for any other reason whatsoever) that elections to the Board for any given year shall be conducted by mail.

Section 5. Resignation and Removal. The unexcused absence of an elected director from three consecutive regular meetings of the Board shall be deemed an offer of resignation which may be accepted by the Board at the meeting during which said third or further absence occurs. Any elected director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. A director shall be considered to have resigned immediately upon the director's ceasing to be an Owner.

Section 6. Vacancies. In the event of a vacancy occurring on the Board by reason of the death, resignation or removal of a director, a successor may be appointed to fill such vacancy by the affirmative vote of a majority of the remaining directors, and such successor shall serve for the unexpired term of his predecessor.

Section 7. Compensation. No director shall receive compensation for acting as a director. However, any director may in the discretion of the Board be reimbursed for actual out-of-pocket expenses incurred in the performance of his duties.

## ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. The Board shall hold its annual meeting immediately following the meeting of the membership at which the Board was elected (or within fifteen days after the close of elections in the event the election is conducted by mail), and no notice shall be necessary providing a majority of the whole Board shall be present. Regular meetings of the Board shall be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. At least four meetings of the Board shall be held during each twelve month period.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two directors, after not less than five (5) days notice to each director. Notice may be given personally or by mail, telephone, facsimile or telegraph, which notice shall state the time, place and purpose of the meeting.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business and the acts of the majority of those present at a meeting at which a quorum is present shall be the acts of the Board.

Section 4. Executive Sessions: All meetings of the Board shall be open to Members to observe the proceedings, except the president may call the Board into executive session on matters of personnel, contract negotiations or for hearings on infractions of published rules and regulations; further, the Board by majority vote may go into executive session for other matters as the Board may from time to time deem appropriate. Any action taken by the Board in executive session shall be recorded in the Minutes of the Board.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by

obtaining the consent of all directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 6. Waiver of Notice. Before or at any meeting of the Board 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 shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 7. Assumed Assent. Any director present at any meeting shall be deemed to have assented to any action taken at such meeting unless his dissent is entered on the minutes or unless his written dissent is filed with the secretary at or immediately following the adjournment thereof, provided that no director may dissent from any action for which he voted at the meeting.

Section 8. Consents and Approvals. Whenever, the Articles or these By-laws shall require written permission of the Board, such permission shall consist of a written statement setting forth the action or activity for which such permission is granted, signed by at least one director who shall have been authorized to sign such permission by the vote of the Board. Written permission of the Members shall consist of a similar written statement signed by the secretary of the Association who shall have been authorized to give such permission by such vote of the Members as may be required to allow the requested action or activity. The action or activity for which permission is granted shall be noted by the secretary in the records of the Board or the Association, as the case may be, according to which body granted such permission.

Section 9. Participation by telephone. Directors may participate in any meeting by conference call, provided that the meeting is arranged in such a fashion that those members participating by conference call and other members who may be present at the meeting shall each be able to hear all comments made by all members participating in the meeting.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board shall have power to:

(a) exercise for the Association all powers, duties and authority vested in or delegated to this Association by law, and not reserved to the membership by other provision of these By-laws, or the Articles of Incorporation.

(b) appoint, employ and remove at pleasure an executive director, a manager, independent contractor, all officers, agents, employees, accountants and attorneys of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient. The Board shall have the power to fix an executive director's powers and duties including, but not limited to, the power of the executive director to engage employees and agents, who may or may not be independent contractors, and to define or limit the liability of the executive director, if any. Such delegation may (but need not) be sufficiently broad as to encompass the full range of power and duties of the Board including, but not limited to, the power to open and maintain bank accounts and write checks on behalf of the Board as directed by the Board. The executive director need not be a member of the Board.

(c) enter into agreements, contracts, deeds, leases and other written instruments or documents in the name of the Association and authorize the execution, delivery and, if appropriate, the recording thereof.

(d) purchase and carry out with the Association as a named insured, one or more package policies of insurance, with the nature and amount of such insurance being determined by the directors, covering Units for fire and extended coverage for the benefit of the Association, its members and their mortgagees and to collect from the members and pay over to the insurer premiums therefore and accept payment of insurance proceeds, settle claims and restore and/or replace damaged property and hire or appoint agents or independent contractors to do any one or more of the foregoing; provided, however, that in the exercise hereof the Association, its officers, directors, employees and agents shall assume no responsibility or liability whatsoever for any losses to persons or property which may occur whether or not due to the negligent performance or failure to perform by the Association, its officers, directors, employees or agents of any obligation arising from the exercise of such power, and the members agree to and shall indemnify and save harmless the Association, its officers, directors, employees and agents from and against all claims, lawsuits and losses caused or alleged to be caused by such performance or failure of performance. In exercising any powers hereunder, the Association is acting on behalf of and as an accommodation to the Owners to enable them to obtain favorable premium rates on a group bases. The final settlement of any claims with respect to damages to a Unit or Units shall be made in accordance with the Declaration and By-Laws governing the



property or, in the absence of guidance from the Declaration and By-Laws, with the concurrence of the Owner.

(e) enter into a contract with any firm, person or corporation, or join with other associations or condominium councils or similar entities in contracting for the maintenance and repair of the Properties, or portions thereof; and to contract for or join with such parties in contracting for the management thereof; and to delegate to the contractor or manager all the power and duties of the Board and the officers, except such as are specifically required by, the Articles or by these By-Laws, to have the approval of the Board, or the members. The contractor or manager may be authorized to determine the budget, make assessments for common expenses and collect assessments, as provided in, the Articles and these By-laws, subject always to the supervision and right of approval of the Board.

(f) (Amended 7/4/87) select and appoint Members to serve as associate directors for a one year term in order to obtain a broader representation from the various condominium and townhouse regimes. Associate directors would also provide special skills or experience that will benefit the Board and the Association in their deliberations, and give interested Members experience in Board activities, thus providing a small pool of experienced replacements for future Board vacancies. Associate directors shall enjoy all the rights and privileges of Board Membership, except the right to vote.

(g) act as agent for the Members to negotiate rental and management contracts including without limitation those with Smugglers' Notch Management Co., Ltd., its successors and assigns, and generally to communicate on behalf of the Members with the entity(ies) managing the Village at Smugglers' Notch.

(h) provide Members with information regarding Village services, charges and procedures.

(i) act as managing agent for condominium associations and townhouse associations within the Village at Smugglers' Notch.

(j) assist membership in the maintenance and enjoyment of their units at the Village at Smugglers' Notch.

Section 2. Rights and further powers. It shall be the right of the Board to:

(a) adopt and publish rules and regulations, governing the use of the Units and the Common Areas and facilities, and the personal conduct of Members, Associate Members and their guests thereon and (subject to the right of the membership to terminate or change the same) impose reasonable fees and assessments necessary to carry out the same, and to assess annual dues for Members and Associate Members. Annual dues shall constitute a lien against the properties of the Members and Associate Members, which lien shall be enforceable in the same fashion as common expenses assessed by condominium associations under Title 27 V.S.A. section 1323.

(b) suspend from membership an Owner during any period in which such Owner shall be in default for more than 180 days after notice, in the payment of any fees or assessment levied by the Association.

(c) cause to be kept a record of all its corporate affairs, make such records available for inspection by any Member, Associate Member, or his agent, and present an annual statement thereof to the Members and Associate Members.

(d) supervise all officers, agents and employees of the Association and see that their duties are properly performed.

(e) designate depositories for Association funds, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Association, and cause such persons to be bonded, as it may deem appropriate.

(f) fix annual dues (subject to the right of the membership to terminate or change the same) at an amount reasonably deemed sufficient to meet the obligations of the Association.

(g) annually set the date(s) assessments and/or fees are due, decide what, if any, interest rate is to be applied to assessments which remain unpaid thirty (30) days after they become due.

(h) procure and maintain adequate insurance to protect the Association, its employees and its personal and real properties, including liability insurance covering officers and directors; and require, at the cost of the Association, that all officers and employees handling or responsible for Association funds shall furnish adequate fidelity bonds.

(i) appoint and remove committees and a registered agent and designate a registered office for the Association as prescribed by law.

(j) exercise their powers and duties in good faith, with a view to the interests of the Association and to this end adopt appropriate guidelines for action on matters where a potential conflict of interest may exist.

## ARTICLE VIII OFFICERS

Section 1. Enumeration of Officers. The officers of this Association shall consist of a president, a vice president, a treasurer (all of whom shall be members of the Board) and a secretary, and such other officers or assistant officers who need not be members of the Board as the Board may from time to time by resolution designate. The president shall be an Owner of at least one Unit which is subject to a year round rental contract with the Smugglers' Notch Management Co., Ltd., its successors and assigns if such contracts are generally in force on a majority of the Members' Units.

Section 2. Election and Appointment of Officers. The president, vice president, treasurer and secretary shall be elected annually by the Board at their annual meeting. All other officers or assistant officers may be appointed by the Board at their annual meeting or at such other meeting (regular or special) as the Board shall determine.

Section 3. Term. Each elected officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve. Each appointed officer of the Association shall hold office for such term (but not to exceed one year) as the Board shall determine by resolution.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Multiple Officers. The offices of president and secretary may not be held by the same person.

Section 7. Duties. The duties of the officers are as follows:

### PRESIDENT

- (a) The president shall preside at all meetings of the Board and of the Association; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all promissory notes and contracts as the Board may approve from time to time.

### VICE PRESIDENT

(b) The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such duties as may be required of him by the Board.

### SECRETARY

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and Association; keep the corporate seal of the Association and affix it on all papers requiring said seal; have custody of the Articles and By-laws of the Association; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

### TREASURER

(d) The treasurer shall cause all monies of the Association to be deposited in appropriate accounts and disbursed therefrom as directed by resolution of the Board; shall co-sign any promissory notes and contracts; keep proper books of account; cause an annual audit of the Association books to be made by a certified public accountant at the completion of each full fiscal year; and shall be the chief officer responsible for the preparation and filing of any and all tax returns for the Association and responsible for the preparation of an annual budget and a statement of income and expenditure to be presented to the Board and to the membership at its regular annual meeting.

Section 8. Execution of Documents. No agreement, check, deed, lease or other instrument having a face value or involving the sum of five thousand dollars or more shall be binding upon the Association unless entered into on their behalf by the Board and signed by an officer and the executive director or two officers. Checks having a face value of less than five thousand dollars may be signed by either the treasurer or the executive director at the treasurer's direction.

Section 9. Delegation of Duties. The secretary and treasurer may delegate all or some of their duties, but not their responsibilities, to an executive director, manager or management company approved by the Board.

Section 10. Executive Committee. The officers of the Association and past presidents who are currently members of the Board shall constitute the executive committee which committee shall have those powers delegated to it from time to time by the Board.

## ARTICLE IX COMMITTEES

The Board may by resolution designate and appoint one or more committees, each of which shall consist of one or more directors or associate directors, which committee to the extent provided by such resolution and permitted by law may have and exercise all or part of the authority of the Board. The Board may also appoint one or more advisory committees to make reports and recommendations to the Board but which shall have no authority to act on behalf on the Board and the members of such committee or committees need not be members of the Association or its Board. The president, or any officer designated by the president, shall be an ex officio member of each committee.

## ARTICLE X FISCAL YEAR

The fiscal year of the Association shall be a calendar year and shall begin on the 1st day of January and end on the 31st day of December of every year.

## ARTICLE XI INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 1. Right to Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, as follows:

(a) if the action, suit or proceeding is not by or in the right of the Association

(1) against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith to the extent that he has been successful on the merits or otherwise in defense of such action, suit or proceeding, or of any claim, issue or matter therein, and

(2) against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection therewith if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) if the action, suit or proceeding is by or in the right of the Association

(1) against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith to the extent that he has been successful on the merits or otherwise in defense of such action, suit or proceeding, or of any claim, issue or matter therein, and

(2) against expenses (including attorneys' fees), judgments, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement thereof if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that a court of the county in which the registered office of the Association is located or the court in which such action, suit, or proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity.

Section 2. Procedure to be Followed. Any indemnification under paragraph (a) (2) or (b) (2) or Section 1 above (unless ordered by a court or made pursuant to a determination by a court as hereinafter provided) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in such paragraph (a) (2) or (b) (2). Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (b) if such a quorum is not obtainable or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the members. In the absence of a determination that indemnification is proper as aforesaid, the director or officer may apply to a court of the county in which the registered office of the Association is located or the court in which the action, suit or proceeding was brought, which shall determine whether the director or officer has met the applicable standard of conduct set forth in such paragraph (a) (2) or (b) (2). If the court shall determine that he has, indemnification shall be made under such paragraph (a) (2) or (b) (2).

Section 3. Payment of Expenses in Advance. Expenses incurred in defending an action, suit or proceeding referred to in Section 1 may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by the Board, upon receipt of an undertaking by or on behalf of the director or officer (regardless of his financial responsibility) to repay such amount unless it shall ultimately be

determined that he is entitled to be indemnified by the Association as authorized in this Article.

Section 4. Other Rights. The indemnification provided by these By-laws shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any agreement, vote of disinterested directors, or otherwise both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person. The indemnification by the Association set forth in this Article XI shall be paid by the Board on behalf of the Association and shall constitute a common expense and shall be assessed and collectible as such.

Section 5. Insurance. The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of these By-laws.

Section 6. Limitation on Liability of Directors and Officers. Every agreement, deed, lease, or other instrument entered into by the Board on behalf of the Association shall provide that the Board and the officers or assistant officers executing the same are acting only as agents for the Association and shall have no personal liability thereunder (except to the extent, if any, that they may also be members at the time any such liability is assessed), that any claim by the other party or parties thereto with respect thereto or to the subject matter thereof shall be asserted against the Board, which shall act on behalf of the Association with respect thereto, and that any liability thereunder or with respect to the subject matters thereof shall be borne by those who are members at the time such liability may be assessed by the Association as a common expense.

## ARTICLE XII AMENDMENT AND CONFLICTS

Section 1. Method. These By-laws may be altered, amended or repealed by the affirmative vote of a majority of the membership of the Association present in person or by proxy at any regular meeting of or at a special meeting called for that purpose, provided a quorum as provided by these Bylaws is present at such regular or special meeting. Amendments shall become effective upon adoption.

Section 2. Conflicts. In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles shall control.

END