

BURKE MOUNTAIN OWNERS ASSOCIATION, INC.

BYLAWS

ARTICLE I
Defined Terms

Section 1.01. Definitions.

(a) Each capitalized term used herein without definition shall have the meaning specified in the Declaration or as herein defined.

(b) As used in these Bylaws,

“Annual Assessment” - the sum due from an Owner on account of the Owner’s Unit pursuant to the Declaration, as based on the Association’s annual budget

“Assessment” - an Annual Assessment, Special Assessment or other charge, fee, cost or expense of the Association attributable to an Owner

“Association” – Burke Mountain Owners Association, an organization originally established by Senator Kitchel, then president of Burke Mountain Recreation, Inc, as the Burke Mountain Recreation Owners Association to be the owners’ association of the development

“Board of Directors” – as described in Article VI

“Community” – the lands and premises subject to the Declaration

“Common Land” – as defined in the Declaration

“Declaration” – the Declaration of Covenant and Restrictions as originally filed in the Land Records of the Town of Burke by MBRI, as it has been and may be amended, restated and supplemented from time to time

“Director” - a member of the Board of Directors

“Members” - the Owners

“Nonprofit Corporation Act” - 11B V.S.A., as amended from time to time

“Owner” the record owner, whether one or more persons, of the fee simple title to a Unit (including Burke Mountain Recreation, Inc., its successors and assigns) and their respective executors, administrators, heirs, devisees, successors and assigns, but shall not include a mortgagee unless the mortgagee has acquired title pursuant to foreclosure or by deed in lieu of foreclosure

“Person” - an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity

“Property” – as described in the Declaration, being the lands and premises in the Resort that are subject to the Declaration

“Resort” – the Burke Mountain Resort, as described in the Declaration

“Roster” - an alphabetical list of the names of all Members who are entitled to receive notice of meeting which shall include the address of each Member entitled to vote and the number of votes each Member is entitled to cast

“Rule” - a policy, guideline, restriction, procedure or regulation, however denominated, adopted by the Board of Directors, governing the conduct of Persons or the use or appearance of the Community; “Rule” shall not include the Association’s internal business operating procedures

“Sanctions” - the suspension of the rights and privileges of an Owner, tenant or lessee or the imposition of monetary penalties or other actions authorized or permitted by law, the Declaration, the Bylaws or a Rule

“Special Assessment” - the sum due from an Owner on account of the Owner’s Unit but not based on the Association’s annual budget

“Unit” - a portion of the Community intended for separate ownership, including a Lot, Town House or party wall structure or condominium apartment

ARTICLE II
Organization

Section 2.01. Name.

The name of the Association is “Burke Mountain Owners Association, Inc.”

Section 2.02. Use of Name.

No person, committee or group of Members, other than those elected by the Membership, or appointed or authorized by the Board of Directors, shall use in their name the name “Burke Mountain Owners Association, Inc.” or any variant thereof, or the initials “BMOA” or any other names, words or phrases that would tend to or give the membership the impression that the Member, committee or group of members is speaking for or on behalf of the Association.

Section 2.03. Principal Office.

The principal office of the Association, at which the Association’s administrative business occurs, shall be located in Burke, Vermont or such other location in the State of Vermont as the Board of Directors may designate.

Section 2.04. Purposes.

The Association has the following purposes and objectives:

- (a) To promote the health and welfare of Owners and occupants of the Community;
- (b) To acquire, hold, manage, regulate, maintain and care for certain portions of the Community for the benefit of the owners of the Units in accordance with applicable law and the Governing Documents;
- (c) To set and collect Assessments and other fees and charges as may be determined from time to time by the Board of Directors;
- (d) To enforce the Declaration, the Bylaws or a Rule;
- (e) To provide voting rights concerning the administration of the Association affairs;
- (f) To represent the interests of the Owners as the Board of Directors determines to be necessary before all federal, State or local agencies, boards and commissions involved with environmental, land use and other matters; and
- (g) Any purpose which may be necessary to further the interest of the Association.

Section 2.05. Powers of the Association.

The Association shall have all of the powers authorized by the Nonprofit Corporation Act, including the following:

- (a) To adopt and amend bylaws and Rules;
- (b) To adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from Owners;
- (c) To hire and discharge managing agents and other employees, agents and independent contractors;
- (d) To institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Community;
- (e) To make contracts and incur liabilities;
- (f) To regulate the use, maintenance, repair, replacement, and modification of Common Land;
- (g) To make additional improvements to the Common Land;

- (h) To acquire, hold, encumber and convey in its own name any right, title, or interest to real estate or personal property, except as otherwise provided by law;
- (i) To impose and receive any payments, fees, or charges for the use, rental or operation of the Common Land and for services provided to owners;
- (j) To impose charges for late payment of assessments and, after notice and a hearing, reasonable fines for violations of the Governing Documents;
- (k) To impose reasonable charges for the preparation and recording of amendments to the Declaration, resale certificates, or statements of unpaid assessments;
- (l) To provide for the indemnification of its officers and Directors and maintain liability insurance for its officers and Directors;
- (m) To exercise any other powers conferred by the Declaration or these Bylaws, or which is legally provided for similar entities or which is necessary and proper to govern and operate the Association;
- (n) To require, by Rule, that disputes between the Board of Directors and Owners or between two or more Owners regarding the Community must be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.

ARTICLE III

Association Membership and Voting Rights

Section 3.01. Composition.

- (a) Each Owner shall be a Member of the Association. Membership shall be established by the recording in the Land Records of the Town of Burke a deed establishing record title to a Unit.
- (b) If a Unit is owned by more than one Person all such Persons shall be Members of the Association but, for the purposes of the representation of such Unit or with regard to the affairs of the Association and the voting of the Members of the Association, that Unit, except as provided in Section 3.03(c), shall be represented by and entitled to a single vote equal to that amount set forth in Section 3.03(a), which shall be exercised and cast by the individual designated pursuant to Section 3.03(b). Ownership of a Unit shall be the sole qualification for membership in the Association.

Section 3.02. Transfer of Membership.

The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to the Unit and then only to the transferee of title to that Unit. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate

automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

Section 3.03. Voting Rights.

(a) Votes in the Association shall be calculated as set forth in the Declaration.

(b) When an entity or more than one Person is the Owner of a Unit, one individual shall be appointed by all owners of such Unit as the "Owner of Record" and the Owner of Record shall give notice of his or her appointment to the Association. A certified resolution shall be sufficient evidence of the authority of an agent for an entity. Each notice shall be sent, and the vote for such Unit shall be exercised, by the Owner of Record. All Members shall be responsible for notifying the Board of Directors of the name and address of their Owner of Record, if any.

(c) The vote for each Unit may be cast only as a whole, and split votes shall not be allowed. If the Owner of Record casts a vote representing a Unit, it shall be conclusively presumed for all purposes that he or she is acting with the authority and consent of all other Owners of that Unit. The Association shall only be required to accept the vote cast by the Owner of Record.

(d) Except where a greater or smaller number is required or specified by these Bylaws, the Nonprofit Corporation Act or the Declaration, a majority of the Owners present in person or voting by proxy at a Meeting at which a quorum is present is required to adopt decisions at any Meeting of the Association.

Section 3.04. Communication Among Members.

The Board of Directors shall establish a reasonable method for Members to communicate among themselves and with the Board of Directors on matters concerning the Association.

ARTICLE IV
Meetings of Association

Section 4.01. Voting - Processes.

(a) Action may be taken by the Members

- (i) at a Meeting by voting in person, through a proxy (as provided in Section 4.05) or by absentee ballot (as provided in Section 4.07); or
- (ii) without a Meeting, by written ballot or by electronic ballot (as provided in Section 4.03).

(b) Action by vote at a Meeting shall be evidenced by voice, show of hand or other manifestation of intent as designated by the presiding officer.

Section 4.02. Meetings.

(a) *Location.* All Meetings of the Association shall be held at the Community or as close thereto as may be practical. In the discretion of the Board of Directors, a Meeting of the Association may be conducted by telephone, video or other conference process which provides all Owners with a reasonable opportunity to hear or perceive the discussion.

(b) *Annual (Regular) Meetings.*

- (i) The annual Meeting of the Association shall be held on a day selected by the Board of Directors in the month of September of each year at the hour of 10:00 AM, or such other date or time as the Board of Directors determines. If for any reason an annual Meeting of the Association shall not be held on the date so designated, the Meeting shall be called by the Secretary and held as soon thereafter as is practical and convenient, but not later than 60 days after the date designated by the Board of Directors.
- (ii) At each annual Meeting,
 - (A) The President and Treasurer shall report on the activities and financial condition of the Association;
 - (B) there shall be elected one or more Directors in accordance with the requirements of these Bylaws; and
 - (C) the Members shall consider and act on such other matters as may properly come before the Meeting.
- (iii) Notice of each annual Meeting shall be given to each Member by the Secretary in the manner provided in these Bylaws. All such notices of any annual Meeting shall be delivered to each Member not less than 10 days and not more than 60 days before such Meeting, and shall specify the place, the date and the hour of such Meeting, shall include an agenda and describe those matters which the Association shall consider at the Meeting which the Nonprofit Corporation Act or other applicable law require to be so described.
- (iv) Prior to each annual Meeting, a Roster shall be prepared. The Roster must be made available for inspection at the Association's principal office by Members or their agents for the purpose of communication with other Members concerning the Meeting. The list shall be provided to each Member requesting it prior to the annual Meeting and shall be available for the Member or the Member's agent to inspect at any time during the Meeting or during any adjournment. Each Member who inspects the Roster shall not make any use of the Roster to solicit money or property (or for any other commercial purpose) or to distribute the names on the Roster to any Person who is not an Owner or for any purpose unrelated to any Owner's interest as an Owner and Member. Any Member who uses the Roster in a manner prohibited under this Section shall, in addition to all other rights,

powers and remedies available to the Association under the Declaration, the Bylaws or a Rule, indemnify and defend the Association and the Board of Directors against and hold the Association and the Board of Directors harmless from any and all claims arising from or related to such Member's use of the Roster.

(c) *Special Meetings.*

- (i) A Special Meeting of the Association, for any purpose or purposes whatsoever, unless otherwise prescribed by statute, may be called at any time by the President of the Association or by a majority of the Board of Directors of the Association. A special Meeting shall be called by the Secretary at the request of Members representing 25 percent or more of the total votes of the Members of the Association entitled to participate.

Except in special cases where other express provision is made by statute, these Bylaws or the Declaration, notice of a special Meeting shall be delivered in the same manner as for annual Meetings and may be given by any Person or Persons entitled to call such Meeting. The notice of any special Meeting shall specify, in addition to the place, date and hour of such Meeting, the general nature of the business to be transacted, and no other business may be transacted at the special Meeting.

- (ii) If a special Meeting is called by Members, the request shall be submitted by those Members in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by facsimile transmission (with confirmation of receipt) to the President, any Vice-President or the Secretary of the Association. The officer receiving the request shall cause notice to be promptly given to the Members entitled to vote, stating a Meeting will be held and the date for such Meeting, which date shall be not less than 30 nor more than 60 days following the receipt of the request. If the notice is not given within 30 days after receipt of the request, the Persons requesting the Meeting may give the notice.

(d) *Notice of Certain Agenda Items.* If action is proposed to be taken at any Meeting of the Association for approval of any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the following proposal(s):

- (i) Removing a Director without cause;
- (ii) Filling a vacancy on the Board of Directors by the Members;
- (iii) Electing to dissolve the Association;

- (iv) Approving a contract or transaction in which a Director has a material financial interest;
 - (v) Amending the Declaration or these Bylaws;
 - (vi) Changing a budget; and
 - (vii) Any matter or matters that shall be approved by the Members under the Nonprofit Corporation Act or other applicable law.
- (e) *Adjourned Meetings and Notices Thereof.*
- (i) Any Meeting of the Association, annual or special, whether or not a quorum is present, may be adjourned from time to time by the affirmative vote of the Members representing votes equal to a majority of the votes of the Members of the Association entitled to participate and represented at such Meeting in person or by proxy but, in the absence of a quorum, no other business may be transacted at any such Meeting unless these Bylaws or the Declaration otherwise provides.
 - (ii) When any Meeting of the Association, either annual or special, is adjourned, notice of the reconvening of the adjourned Meeting shall not be required as long the new date, time and place is announced at the Meeting so adjourned. If, however, the original Meeting is adjourned to a date more than 70 days after the date of adjournment, the Board of Directors shall fix a new date for determining the right to notice and/or the right to vote at the adjourned Meeting. Subject to the foregoing, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned Meeting, other than by an announcement at the Meeting at which such adjournment is taken.

(f) *Quorum.* Except as otherwise provided in the Bylaws, the presence at the beginning of the Meeting in person, by proxy or by absentee ballot of Members of 20 percent or more of the votes in the Association shall constitute a quorum at all Meetings of the Association.

Except as otherwise provided in these Bylaws, each action required or permitted to be taken by the Members at a Meeting may be taken only at a duly called and properly noticed annual or special Meeting at which a quorum is present. The Members present at a duly called or held Meeting at which a quorum is present may continue to do business until adjournment, and the withdrawal of enough Members so that less than a quorum is present shall not invalidate any action taken if the action taken is approved by at least a majority of the Members required to constitute a quorum. If any Meeting cannot be held because a quorum is not present, no business shall be conducted and the presiding officer shall adjourn the Meeting without delay.

(g) *Waiver by Attendance.* Attendance by a Person at a Meeting of the Association in person, by proxy or by ballot shall constitute a waiver of notice of that Meeting, unless the Person objects at the beginning of the Meeting to the transaction of any business due to the inadequacy or

illegality of the notice. Attendance at a Meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the Meeting, if that objection is expressly made at the Meeting.

(h) *Conduct of Meetings; Order of Business.*

- (i) Unless unavailable, the President shall preside at all Meetings of the Association. The Secretary shall keep the minutes of all Meetings of the Association and record in a minute book all resolutions adopted and all transactions occurring thereat or in lieu thereof.

The then-current edition of Robert's Rules of Order shall govern the conduct of all Meetings of the Association when not in conflict with these Bylaws, the Declaration or the Nonprofit Corporation Act.

- (ii) Unless modified by the Board of Directors or the Members, the order of business at annual Association Meetings and, as far as practicable at all other Association Meetings, shall be:

- (A) Call to order;
- (B) If the President is unavailable, election of a presiding officer for the Meeting;
- (C) Proof of notice of Meeting or waiver of notice;
- (D) Calling of the roll and certifying of proxies;
- (E) Comment period for Owners regarding any matter affecting the Community or the Association;
- (F) Reading and disposal of any unapproved minutes;
- (G) Report of officers, including the report of the President on the activities of the Association and of the Treasurer on the financial condition of the Association;
- (H) Vote on the annual, supplemental or revised budget, if appropriate;
- (I) Reports of committees;
- (J) Election and appointment of Directors, as appropriate;
- (K) Unfinished business;
- (L) New business;

(M) Adjournment.

Section 4.03. Action Without Meeting by Written or Electronic Ballot.

(a) Any action which under the provisions of the Nonprofit Corporation Act or other applicable law may be taken at a Meeting of the Members may be taken without a Meeting and without prior notice if the Board of Directors so determines and if:

- (i) a written ballot is distributed to every Member entitled to vote that provides an opportunity to specify approval or disapproval of each order of business proposed to be acted upon by the Association and a reasonable amount of time for the Member to return the ballot to the Association;
- (ii) the number of signed approvals required under these Bylaws for approval, each of which sets forth the action so taken, is received in writing;
- (iii) the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a Meeting authorizing the action; and
- (iv) the number of approvals equals or exceeds the number of votes that would be required to approve at a Meeting at which the total votes cast was the same as the number of ballots cast.

A solicitation shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of Directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted and that a ballot received within the specified time will be cast in accordance with the choice(s) specified by the Member casting the ballot.

(b) Subject to the applicable provisions of the Nonprofit Corporation Act or other applicable law, any Member casting a ballot, or the proxyholders of a Member or a personal representative of the Member or their respective proxyholders, may revoke the ballot, or substitute another, by a writing received by the Association prior to the time specified in the solicitation pursuant to subsection (a), but may not do so thereafter. Such revocation is effective upon its receipt by the Secretary of the Association.

Section 4.04. Record Date.

(a) If the Person who is identified as the Owner in the most recent deed to a Unit changes between the date of notice and the date of a Meeting for which the notice was given, it shall be the responsibility of the Owner to notify the Secretary of the change in ownership. Absent evidence of change of ownership satisfactory to the Secretary given at or prior to the Meeting, the Association shall have the right to rely upon the record ownership as of the date of Notice of the Meeting.

(b) The Board of Directors may fix a date in the future as a record date for the determination of the Members entitled to notice of and to vote at any Meeting of the Association. The record date so fixed shall not be more than 60 nor less than 10 days prior to a Meeting. When a record date is so fixed, only Members of record on that date shall be entitled to notice of and to vote at the Meeting, notwithstanding any transfer of a Unit after the record date.

(c) If no record date is fixed in accordance with the provisions of subsection (b), the record date for determining those Members entitled to receive notice of, or to vote at, a Meeting of the Association shall be the business day immediately preceding the day on which notice is given or, if notice is waived, the business day immediately preceding the day on which the Meeting is held.

The record date for determining those Members entitled to vote by ballot on action without a Meeting, when no prior action by the Board of Directors has been taken, shall be the day on which the first written consent regarding the matter is received from a Member. When prior action of the Board of Directors has been taken, it shall be the day on which the Board of Directors adopts the resolution relating to that action.

For purposes of this Section, a Person holding membership as of the close of business on the record date shall be deemed the Member of record.

Section 4.05. Proxies.

(a) Except as provided in this Section and the Nonprofit Corporation Act, every Person entitled to vote shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such Person as his or her duly authorized agent and filed with the Secretary of the Association prior to the commencement of the Meeting or the taking of the action at which the proxy is to be exercised. A form of proxy may be distributed to each Member by the Association to afford him or her the opportunity to vote in absentia at a Meeting of the Association if it meets the requirements for a written ballot set forth in Section 4.07 and includes the name or names of Members who expect to be in attendance in person at the Meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Member's vote as specified in the form of proxy.

(b) A validly executed proxy that does not state that it is irrevocable shall continue in full force and effect, (i) unless revoked by the Member executing it, before the vote cast pursuant to that proxy, by a writing delivered to the Association stating that the proxy is revoked, by delivery to the Association of a subsequent proxy executed by such Member, or by personal attendance and voting at a Meeting by such Member, or (ii) if written notice of the death or incapacity of the maker of the proxy is received by the Association before the vote pursuant to that proxy is counted. No proxy shall be valid after the expiration of the earlier of 11 months from the date of the proxy or such shorter term specified in the proxy.

(c) In any election of Directors, any proxy or written ballot that is marked by a Member "withhold" or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld, shall not be voted either for or against the election of a Director. Failure

to comply with subsections (a), (b) or (c) of this Section shall not invalidate any action taken, but may be the basis for challenging the proxy at or prior to a vote or action.

(d) A Person may not cast undirected proxies representing more than 15 percent of the votes in the Association.

Section 4.06. Inspectors of Election.

(a) In advance of any Meeting of the Association, the Board of Directors may appoint inspectors of election to act at such Meeting and any adjournment thereof. If inspectors of election are not so appointed, or if any individual so appointed fails to appear or refuse to act, the presiding officer of any such Meeting may, and on the request of any Member or Member's proxy shall, make such appointment at the Meeting. The number of inspectors shall be either one or three. If appointed at a Meeting on the request of one or more Members or proxies, the majority of Members represented in person or by proxy shall determine whether one or three inspectors are to be appointed.

(b) The duties of such inspectors shall include: determining the authenticity, validity and effect of proxies; receiving votes, ballots or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and doing such acts as may be proper to conduct the election or vote with fairness to all Members. If there are three inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all.

Section 4.07. Absentee Ballot.

A Member may vote by absentee ballot without being present at a Meeting of the Association if the Association delivers to every Member entitled to vote on a matter a written ballot which sets forth the proposed action and provides an opportunity to vote for or against the action. The requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, so long as the electronic transmission is submitted with information from which it can be determined that the electronic transmission was authorized by the Member.

ARTICLE V
Assessments and Lien Rights

Section 5.01. Membership Assessments.

Assessments provided for in the Declaration, together with all other charges provided for in the Declaration, the Bylaws, a Rule or applicable law, shall be paid by the Members at the time, in the manner and subject to the terms, conditions and limitations set forth in the Declaration, the Bylaws or a Rule. The Board of Directors shall fix, levy, collect and enforce Assessments at the time, in the manner and subject to the terms, conditions and limitations set forth in the Declaration, the Bylaws or a Rule and applicable law.

Section 5.02. Enforcement, Lien Rights, Sanctions.

(a) For the purpose of enforcing and collecting Assessments, the Association shall have the lien rights set forth in applicable law and the Declaration, the Bylaws or a Rule, which lien rights shall be enforceable by the Board of Directors in the manner set forth in applicable law and the Declaration, the Bylaws or a Rule. The Board of Directors shall also have and be entitled to exercise all other rights and remedies set forth in the Declaration or otherwise provided for at law, in equity or by statute.

(b) The Board of Directors shall have the right to impose Sanctions for the period during which any Assessment owed by the Member remains unpaid and delinquent. The Board of Directors shall also have the right to other Sanctions for any other failure to comply with the Declaration, the Bylaws or a Rule by any Member or an occupant, guest or invitee of a Member; however, any Sanction shall be imposed by the Board of Directors only in compliance with the applicable law and the Declaration, the Bylaws or a Rule.

Any proceeding challenging a Sanction, including a proceeding in which defective notice is alleged, shall be commenced within one year after the effective date of the Sanction. Imposition of a Sanction shall not relieve a Member from the payment of an Assessment due to the Association.

Section 5.03. Collection of Assessments and Fees.

The Board of Directors may, from time to time, establish late charges and the rate(s) of interest within legal limits to be charged on an Assessment which remains unpaid more than 30 days after the date when due and may charge the cost of collecting such delinquent amounts, including reasonable attorney's fees.

ARTICLE VI
Board of Directors

Section 6.01. Number and Qualifications.

(a) The initial Board of Directors will be comprised of up to 11 members and shall be elected as follows:

- (i) A Director shall be a representative of and nominated by the Burke Mountain Academy;
- (ii) A Director shall be a representative of and nominated by the Resort;
- (iii) Directors shall be nominated by and be owners of each of the condominium developments on Burke Mountain. If an association fails to nominate a director, an owner(s) from that condominium community shall be nominated by the members to represent that development.
- (iv) Two Directors shall be nominated by the members who are owners of a single family home or undeveloped lot.

- (v) One at large Director, or as many as three if the Board of Directors is expanded pursuant to subsection (e), shall be nominated from among any of the owners subject to the Declaration.

(b) Except for Directors nominated by Burke Mountain Academy and the owner of the Resort, each Director shall be an Owner or the spouse of an Owner. If a Unit is owned by a Person that is not an individual, then an officer or agent of a corporation, the general partner of a partnership, a member of a limited liability company or the beneficiary of a trust shall be an Owner for the purpose of qualifying as a Director.

(c) All Directors nominated according to the provisions of Section 6.01. (a) will be put forward for consideration by the owners at the Annual Meeting of Members. Directors nominated by BMA, the Resort, and the condominium associations will be elected if they receive a majority of votes from those eligible to vote who attend the annual meeting or vote by proxy. If more than one director is nominated from a condominium development pursuant to Section 6.01 (a) (iii), the owner with the highest vote total will be elected. The two nominees with the highest vote totals pursuant to Section 6.01 (a) (iv) will be elected. Depending on the number of at large board positions being filled, the nominee(s) who receive the highest vote totals will be elected.

(d) The Board of Directors shall have all of the powers of the Association not delegated to the Owners by the Nonprofit Corporation Act and other applicable law.

(e) At such time as the Board in its discretion determines it to be in the best interests of the Association, it may increase the Board on resolution to add as many as two additional Directors, to be elected by the owners of residential lots and condominium apartments.

Section 6.02. Nominating Committee; Nomination by Members.

(a) The President of the Association will solicit nominations of Directors from the Resort, BMA, and the seven condominium associations at least 30 days preceding the day of the election. The President may appoint a committee of Members to select qualified candidates for nomination to fill the remaining number of seats as determined by the board, including the homeowner representative, the non-designated directors, and owner(s) from any associations that have not formally recommended a candidate. Nominations shall be concluded at least 10 days preceding the day of the election, though nominations can also be made at the annual meeting.

(b) At the Meeting to elect Directors, the Presiding Officer shall call for nominations of Directors, if any, from the floor for any director position for which member nominations are eligible; any individual so nominated to stand for election and who is willing to serve shall have his or her name added to the written ballots to be used in the conduct of the election

Section 6.03. Election and Term of Office.

(a) Except as provided in subsection (b), each Director shall serve two year terms, and until their successors are elected and qualified. The Directors elected pursuant to Section

6.01(a)(iii) through (v) shall serve staggered terms. The term of office of three Directors elected pursuant to Section 6.01(a)(iii) through (v) shall be fixed at three years; the term of office of three Directors elected pursuant to Section 6.01(a)(iii) through (v) shall be fixed at two years; and the term of office of three Directors elected pursuant to Section 6.01(a)(iii) through (v) shall be fixed at one year. The allocation of terms of the initial Directors shall be made by the President by random selection. At the expiration of the term of office of a Director elected pursuant to Section 6.01(a)(iii) through (v), a successor shall be elected to serve for a term of two years. A Director shall hold office until his or her successor shall have been elected by the Association.

(b) Each Director elected pursuant to Section 6.01(a)(i) or (ii) shall serve a two year term, and until his or her successor is elected and qualified.

Section 6.04. Removal or Resignation of Section 6.01(a)(i) and (ii) Directors; Vacancies.

A Director elected pursuant to Section 6.01(a)(i) or (ii) shall be removed at any time at the request of the nominating organization, and a replacement director nominated to fill the Director's place. The Board of Directors can elect the nominated Director(s) at a regular board meeting to fill the vacancy until the next Annual or Special Meeting of the owners.

Section 6.05. Removal or Resignation of Section 6.01(a)(iii) through (v) Directors; Vacancies.

(a) At any regular or special Meeting of the Association, any one or more Directors elected pursuant to Section 6.01(a)(i) through (v) may be removed with or without cause by Members having a majority of the votes entitled to participate, and a successor may then and there be elected to fill the vacancy thus created. A replacement director representing Burke Mountain Academy or the Resort would have to be nominated by their respective organizations, and replacement directors representing a condominium community would have to be an owner in that development. A Director whose removal has been proposed by the Members shall be given notice of the time, place and purpose of the Meeting at least seven days prior to the Meeting and shall be given an opportunity to be heard at the Meeting. A Director may resign at any time and shall be deemed to have resigned upon disposition of his or her Unit or unexcused failure to attend four consecutive meetings of the Board of Directors.

(b) Vacancies in the Board of Directors among Directors elected pursuant to Section 6.01(a)(iii) through (v) (caused by any reason other than the removal of a Director by a vote of Members) shall be filled by a vote in the same manner as the association fills a vacancy to its board of directors. Vacancies in the Board of Directors among Directors elected pursuant to Section 6.01(a)(iii) through (v) (caused by any reason other than the removal of a Director by a vote of Members) shall be filled by a vote of a majority of the remaining Directors at a regular, or if necessary, special Meeting of the Board of Directors held for such purpose promptly after the occurrence of any such vacancy, even though the Directors present at such Meeting may constitute less than a quorum. Each individual so elected shall be a Director for the remainder of the term of the individual being replaced and until a successor shall be elected at the next annual Meeting of the Association.

Section 6.06. Meetings of the Board of Directors.

(a) A regular Meeting of the Board of Directors shall be held immediately following, and at the same location as, the Annual Meeting. The Board of Directors shall meet at least three times each year, including the Meeting immediately following the Annual Meeting.

(b) 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 of the Board of Directors shall be delivered to each Director and Member by hand-delivery, United States mail, electronic mail (if agreed to by the Director or Member) or facsimile transmission, at least 10 days prior to the day named for such Meeting. The notice shall state the time, date and place of the Meeting and the agenda for the Meeting.

(c) Special Meetings of the Board of Directors may be called by the President on notice to each Director and Member, given by United States mail, hand delivery or electronic mail (if agreed to by the Director or Member), at least five days prior to the day named for the Meeting. The notice shall state the time, place and purpose of the Meeting and, unless the Meeting is scheduled to deal with an emergency, the agenda for the Meeting.

(d) Directors may participate in any Meeting of the Board of Directors by use of any means of communication, including an electronic, telecommunication and video- or audio-conferencing telephone call, by which all Directors participating in the Meeting may simultaneously or sequentially communicate with each other during the Meeting; and participation in a Meeting in such a manner shall constitute presence in person at the Meeting.

(e) The Board of Directors may hold executive sessions in a regular or special Meeting from which others are excluded by affirmative vote of two-thirds of the Directors present at the Meeting. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter shall be considered in the executive session. No formal or binding action may be taken in executive session. An executive session may be held only to:

- (i) consult with the Association's lawyers concerning legal matters;
- (ii) discuss existing or potential litigation or mediation, arbitration or administrative proceedings;
- (iii) discuss labor or personnel matters;
- (iv) discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage; or
- (v) prevent public knowledge of the matter to be discussed if the Board of Directors determines that public knowledge would violate the privacy of any Person.

(f) Subject to the provisions of subsection (e), each Meeting of the Board of Directors shall be open to Members in good standing, but Members may not participate unless permission is requested by a Director and approved by the Board of Directors.

If the agenda for a Meeting of the Board of Directors includes an item for Member comment on matters affecting the Association or the Community, the President may limit the number of individuals who are allowed to speak and set a limit on the amount of time and frequency an individual may speak.

(g) No vote shall be taken at a Meeting on any matter not disclosed in the Meeting's agenda.

Section 6.07. Waiver of Notice.

Any Director may at any time, in writing, waive notice of any Meeting of the Board of Directors, 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 constitute a waiver of notice by him or her of the time, place and purpose of that Meeting. If all Directors are present at any Meeting of the Board of Directors, no notice shall be required and any business may be transacted at that Meeting.

Section 6.08. Quorum.

At all Meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a Meeting at which a quorum is present shall constitute the decision of the Board of Directors.

Section 6.09. Compensation.

No Director shall receive any compensation from the Association for acting as such.

Section 6.10. Action Without Meeting.

Subject to the limitations set forth in the Nonprofit Corporation Act, any action by the Board of Directors required or permitted to be taken at any Meeting may be taken without a Meeting if all of the members of the Board of Directors shall individually or collectively consent in writing or by electronic transmission to such action. Any such consent shall be filed with the minutes of the proceedings of the Board of Directors not later than the next Meeting of the Board of Directors.

Section 6.11. Minutes of Meetings.

A copy of the written minutes of any Meeting of the Board of Directors shall be made available at the office of the Association to all Members within 60 days after the adjournment of such Meeting. Upon written request by a Member to the Board of Directors requesting a copy of the written minutes and specifying the date of the Meeting, the minutes of such Meeting shall be

mailed to the requesting Member on or after the day the written minutes are available at the Association's office.

Section 6.12. Discretion of Board of Directors.

The Board of Directors may determine whether to take enforcement action by exercising the Association's powers to impose Sanctions or commence an action for a violation of applicable law or the Governing Documents, including whether to compromise any claim for unpaid Assessments or other claims made by or against it. The Board of Directors shall not have a duty to take enforcement action if it determines that, under the facts and circumstances presented,

- (a) the Association's legal position does not justify taking any or further enforcement action;
- (b) the covenant, restriction or Rule being enforced is, or is likely to be, construed as inconsistent with law;
- (c) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (d) it is not in the Association's best interest to pursue an enforcement action.

The Board of Directors' decision not to pursue enforcement under one set of circumstances shall not prevent the Board of Directors from taking enforcement under set of circumstances, but the Board of Directors shall not be arbitrary or capricious in taking enforcement action.

Section 6.13. Adoption, Amendment or Repeal of Rules.

Every Rule adopted by the Board of Directors shall be reasonable. Prior to adopting, amending or repealing any Rule, the Board of Directors shall give to each Owner notice of:

- (a) its intention to adopt, amend or repeal a Rule and provide the text of the Rule or proposed change; and
- (b) the date on which the Board of Directors will act on the proposed Rule or amendment after considering comments from Owners.

Following adoption, amendment or repeal of a Rule, the Association shall give notice to the Owners and provide a copy of any new or revised Rule.

Section 6.14. Committees.

The Board of Directors may establish committees and subcommittees and appoint Directors to serve on them. Each committee shall have two or more members who serve at the pleasure of the Board of Directors. No decision or action by a committee or subcommittee shall be binding on the Association unless such authority is delegated to the committee in a resolution approved by the Board of Directors; provided however, a committee may not (a) approve or recommend to Members dissolution, merger or the sale, pledge or transfer of all or substantially

all of the Association's assets; (b) elect, appoint or remove directors or fill vacancies on the Board of Directors or on any of its committees; (c) adopt, amend or repeal the Association's Articles of Incorporation or these Bylaws; or (d) amend or repeal any resolution of the Board of Directors.

ARTICLE VII
Officers

Section 7.01. Designation.

The principal officers of the Association shall be the President, one or more Vice Presidents, the Secretary and the Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. The President shall be a Director. Each other officer shall be an Owner or the spouse of an Owner.

Section 7.02. Election of Officers.

The officers of the Association shall be elected annually by the Board of Directors at the organizational Meeting of each new Board of Directors and shall hold office at the pleasure of the Board of Directors.

Section 7.03. Removal or Resignation of Officers.

(a) Upon the affirmative vote of a majority of all Directors, any officer may be removed, either with or without cause.

(b) An officer may resign at any time by giving written notice to the Board of Directors. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

(c) Upon the removal, resignation or death of an officer, a successor may be elected at any regular Meeting of the Board of Directors or at any special Meeting of the Board of Directors called for such purpose.

Section 7.04. Officers.

(a) *President.* The President shall be the chief executive officer of the Association; preside at all Meetings of the Board of Directors; and have all of the general powers and duties which are incident to the office of president set forth in these Bylaws and generally including, without limitation, the power to appoint committees from among the Owners from time to time as the President may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall prepare (or cause to be prepared) and shall execute, certify and cause to be recorded amendments to the Declaration on behalf of the Association.

(b) *Vice President.* The Vice President (or that Vice President designated by the Board of Directors if there is more than one) shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other individual. The Vice President shall also perform such other duties as shall from time to time be imposed upon him or her by the Board of Directors or by the President.

(c) *Secretary.* The Secretary shall keep the minutes of all Meetings of the Board of Directors; have charge of such books and papers as the Board of Directors may direct; maintain a register setting forth the place to which all notices to Owners and others shall be delivered; and perform all the duties set forth in these Bylaws and, in general, perform all the duties incident to the office of secretary. The Secretary may, from time to time, assign to the Managing Agent the responsibility for providing notices and other communications to the owners.

(d) *Treasurer.* The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping (or causing to be kept) full and accurate financial Records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; make (or cause to be made) disbursements on behalf of the Association upon consent of the Board of Directors except as provided in Section 11.06; and be responsible for the deposit of all monies and other valuable effects in the name of the Board of Directors or the Association, in such depositories as may from time to time be designated by the Board of Directors; and, in general, perform all the duties incident to the office of treasurer. The Treasurer may, from time to time, assign to the Managing Agent the responsibility for signing checks pursuant to a resolution of the Board of Directors.

Section 7.05. Compensation of Officers.

No officer who is also a Director shall receive any compensation from the Association for acting as such officer.

Section 7.06. Bonds.

The Association shall obtain, at its expense, adequate fidelity bonds, officer and director insurance coverage, or other similar insurance coverage for all officers and employees of the Association handling or responsible for Association funds, or taking actions as Directors, officers or agents of the Association.

ARTICLE VIII
Liability, Indemnification

Section 8.01. Liability of the Board of Directors, Officers, Owners and Association.

(a) The Directors and officers of the Association shall not be liable to the Association for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith.

(b) The Association shall indemnify and hold harmless each of the officers and directors from and against all contractual liability to others arising out of contracts made by the officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Vermont Nonprofit Corporation Act, other applicable law, the Declaration, or these Bylaws.

Section 8.02. Exculpation.

The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or by any Member or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Community or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to an Owner for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Land. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making or repairs or improvements to the Common Land or from any action taken by the Association to comply with any law, ordinance or with the order of directive of any municipal or other governmental authority.

ARTICLE IX
Books and Records

Section 9.01. Books and Records.

(a) *Records to be Maintained and Retained.* The Association shall maintain and retain the following:

- (i) detailed Records of receipts and expenditures affecting the operation and administration of the Association and other appropriate accounting Records;
- (ii) minutes of all Meetings of the Association and the Board of Directors (other than executive sessions) and a Record of all actions taken by the Association or the Board of Directors without a Meeting;
- (iii) a current Roster;
- (iv) the Association's original or restated Articles of Incorporation and all amendments thereto;
- (v) the current Rules;
- (vi) all financial statements and tax returns of the Association for the past three years;

- (vii) a list of the names and addresses of current members of the Board of Directors and officers;
- (viii) the Association's most recent periodic report to the Secretary of States;
- (ix) copies of current contracts to which the Association is a party;
- (x) Records of Board of Directors actions to approve or deny any requests for design or architectural approval from Owners; and
- (xi) ballots, proxies and other Records related to voting by Members for one year after the election, action or vote to which they relate.

Each shall be kept either in written or typed form or in any other form capable of being converted into written, typed or printed form.

(b) *Inspection by Members.* Upon not less than five days' notice, all Records retained by the Association shall be made available for inspection and copying by a Member of the Association or by his or her duly appointed representative, during reasonable business hours or at a mutually convenient time at the office of the Association or mutually convenient location and for a purpose reasonably related to his or her interest as a Member.

Information provided pursuant to this Section shall not be used for commercial purposes.

(c) *Records That May Be Withheld.* Records retained by the Association may be withheld from inspection and copying to the extent they concern:

- (i) personnel, salary and medical Records relating to specific individuals;
- (ii) contracts, leases and other commercial transactions to purchase goods or services, currently being negotiated;
- (iii) existing or potential litigation, or mediation, arbitration or administrative proceedings;
- (iv) existing or potential matters involving, federal, State or local administrative or other formal proceedings before a court or other forum for enforcement of the Declaration, these Bylaws or the Rules;
- (v) communications with the Association's lawyers which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
- (vi) information the disclosure of which would violate law;
- (vii) Records of an executive session of the Board of Directors;

(viii) individual Unit files other than those of the requesting owner.

(d) *Fees for Copying.* If the Member requests a copy of the list, the Board of Directors shall charge for the cost of preparing the copy.

(e) *No Duty to Compile.* The Association shall have no duty to compile or synthesize information in its Records for a Member.

(f) *Inspection by Directors.* Every Director shall have the absolute right at any reasonable time to inspect all books, Records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant books, Records and documents at the expense of the Director unless he or she is acting on behalf of the Association.

Section 9.02. Audit.

The Association may obtain an audit of the books and Records of the Association and the report of any such audit shall be made available to the Owners.

ARTICLE X
Confidentiality

Section 10.01. Obligation of Confidentiality.

Each officer, Director and Member shall have a continuing obligation to keep confidential any information made available to him or her pursuant to the Declaration, the Bylaws or a Rule. The Association is hereby released from any and all claims that may arise from the publication of information by the Association as required by applicable law or the Declaration, the Bylaws or a Rule.

ARTICLE XI
Amendment; Miscellaneous

Section 11.01. Amendment.

These Bylaws may be amended by vote of Owners of Units to which at least 25 percent of the votes in the Association are allocated.

Section 11.02. Recitals.

The Recitals are a part of the Bylaws and are incorporated herein by reference.

Section 11.03. Notices.

Each notice, demand, bill, statement or other communication shall be in writing and shall be deemed to have been duly given if delivered personally or if sent postage prepaid (a) if to an Owner, at the address which the owner shall designate in writing and file with the Secretary or, if

no such address is designated, at the address of the Unit of that Owner, or (b) if to the Association or the Board of Directors to the principal office of the Association or at such other address as shall be designated in writing to the owners pursuant to this Section.

Section 11.04. Captions.

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws or the intent of any provision thereof.

Section 11.05. Fiscal Year.

The Fiscal Year of the Association shall be the period established by the Board of Directors from time to time as the fiscal year for the Association. The fiscal year for the Association shall initially commence on January 1 and end on December 31.

Section 11.06. Checks; Drafts; Contracts and Instruments.

(a) Each check, draft or other order for payment of money, note or other evidence of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such individual or individuals and in such manner as, from time to time, shall be determined by resolution of the Board of Directors.

(b) The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers or agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by a contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 11.07. Gender.

The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders, and vice versa, and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

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