

THE RESTATED BY-LAWS OF BREAKAWAY WEST ASSOCIATION  
EFFECTIVE 12/1/83

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BY-LAWS

OF

BREAKAWAY WEST ASSOCIATION

ARTICLE I

Object

1. The purpose for which this non-profit Corporation is formed is to govern that condominium property situate in the County of Eagle, State of Colorado, known as Breakaway West; such property has been submitted to the provisions of the Condominium Ownership Act of the State of Colorado by recorded Condominium Declaration.

2. All present or future owners, tenants, and any other persons who might use such property in any manner are subject to the regulations set forth in these By-Laws. Acquisition of a fee or leasehold interest in or the mere occupancy of any of the condominium units of the project, hereinafter referred to as the "units", shall constitute ratification and acceptance of these By-Laws and an agreement to comply herewith.

ARTICLE II

Membership, Voting, Quorum, Proxies

1. Membership. Membership in this Association, except for membership in the first Board of Directors, shall be limited to record owners of the condominium units and subject to the Condominium Declaration. One membership in the Association shall be issued to the record owner of each condominium unit; except that each membership representing ownership of a parking unit shall carry with it one half of the voting strength of a membership representing ownership of a residential unit. The record owners of all condominium units collectively shall constitute all the members. In the event any such unit is owned by two or more persons, whether by joint tenancy, tenancy in common, or otherwise, the membership as to such condominium unit shall be joint and a single membership for such unit shall be issued in the names of all the owners, and they shall designate to the Association in writing at the time of issuance, one person who shall hold the membership and have the power to vote said membership. No membership shall be issued to any other person or persons except as they may be issued in substitution for outstanding memberships assigned to new record owners of condominium units.

2. Voting. Each member present in person or by proxy shall, except as may be provided in the Condominium Declaration, be entitled to one vote for each condominium unit owned by said member; except that each membership representing ownership of a parking unit shall carry with it one half of the voting strength of a membership representing ownership of a residential unit. Cumulative voting is prohibited.

3. Quorum. The presence either in person or by proxy of at least fifty-one percent of the voting strength of record shall constitute a quorum of the Association for all purposes unless the representation of a larger group shall be required by law, by the Articles of Incorporation, or by these By-Laws, and in that event representation of the voting strength so required shall constitute a quorum.

4. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary 4 hours before the appointed time of each meeting. The Secretary will certify and post, prior to the meeting, all proxies which meet the rules and regulations established by the Board of Directors.

#### Administration

1. General. The owners of the units will constitute the Breakaway West Association, hereinafter referred to as "Association", which will have the responsibility of administering the project through a Board of Directors as herein provided.

2. Place of Meetings. Meetings of the Association shall be held at such place as the Board of Directors may determine.

3. Annual Meetings. Annual meetings of the Association shall be held on the first Saturday of September of each year or at such other time as the Association may, by majority vote, approve. At such meeting there shall be elected a Board of Directors in accordance with the requirements set forth herein. The Association may also transact such other business of the Association as may properly come before it.

4. Special Meetings. Special meetings of the Association for any purpose or purposes other than those regulated by statute may be called for by the President as directed by resolution of the Board of Directors, or upon a petition signed by a majority of the voting strength of the Association. Such petition shall state the purpose or purposes of such proposed meeting. No business shall be transacted at a special meeting except as stated in the notice thereof unless by consent of three-fourths of the Association voting strength present, either in person or by proxy.

5. Notice of Meetings. The President or Secretary shall give or cause to be given notice of the time, place, and purpose of holding each annual or special meeting by mailing or hand delivering such notice at least 10 days prior to such meeting to each Association member at the respective addresses of said members as they appear on the records of the Association.

6. Adjourned Meetings. If the number of Association members necessary to constitute a quorum shall fail to attend in person or by proxy at the time and place of meeting, the Chairman of the meeting, or a majority in interest of the Association voting strength present in person or by proxy may adjourn the meeting from time to time until the necessary number of Association members shall be in attendance. At any adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the original meeting.

7. Waiver of Notice. Any member may at any time waive any notice required to be given under these By-Laws or by statute or otherwise, and the presence of a member in person at any meeting of the members shall be deemed such a waiver.

## ARTICLE IV

### Board of Directors

#### 1. Number and Qualification.

(a) The affairs of this Association shall be governed by a Board of Directors consisting of not less than three nor more than seven members of the Association; provided, however, that the manager under contract to the Association shall not serve as a member of the Board of Directors.

(b) Where a member of the Association elected to the Board of Directors is other than a natural person, it shall designate one of its officers, principals, partners or agents to perform its duties as one of the members of the Board of Directors.

2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the members. The powers of the Board of Directors shall include, but not be limited to, all of the rights and duties of the Board of Directors as set forth elsewhere in these By-Laws and the Articles of Incorporation, and in the Declaration, and shall also include the power to promulgate such rules and regulations pertaining to such rights and duties as may be deemed proper and which are consistent with the foregoing. The Board of Directors may delegate such duties as appear in the best interests of the Association and to the extent permitted by law.

The Board of Directors may, on contract, delegate the routine operation and management of the Association affairs to a Managing Agent to be selected by the Board of Directors. Such Managing Agent shall be responsible to the Board of Directors, and shall submit a comprehensive report on his activities at each annual meeting.

3. Election and Term of Office. The term of the Directors named in the Articles of Incorporation shall be until the first annual membership meeting or until their successors are duly chosen and qualify. Their successors shall be elected at the first annual meeting of the members of the Association. A new Board of Directors shall be elected by the members at each regular annual meeting thereafter and each Director shall hold office for a term of one year or until a successor shall be elected and shall qualify except as hereinafter otherwise provided. The number of Directors may be altered from time to time by the action of a majority of the voting strength of the Association at any regular or special meeting called for such purpose. In the event of any increase in the

number of Directors in advance of the annual meeting, each additional Director shall be elected by the then Board of Directors and hold office until his successor is elected and shall qualify.

4. Vacancies. Vacancies on the Board of Directors caused by any reason shall be filled by vote of the majority of the remaining Directors even though they may consist of less than a quorum and each member so elected shall be a Director until his successor is duly elected by the members of the Association at the next annual meeting or special meeting called for such purpose.

5. Removal of Directors. At any regular or special meeting of the Association, any one or more of the Directors may be removed with or without cause at any time by the affirmative vote of seventy-five percent of the entire voting strength of record and a successor may then be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at the meeting.

6. Compensation. No compensation shall be paid to the Directors for their services as Directors except each Board member attending Board meetings shall be paid \$25 as reimbursement for their out of pocket expenses for attending such meetings.

7. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within thirty days of election at such time and place as shall be fixed at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

8. Regular Meetings. 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, but at least one meeting shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least ten days prior to the day named for the meeting.

9. Special Meetings. Special meetings of the Board of Directors may be called by the President on ten days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time and place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least fifty percent of the Directors.

10. Waiver of Notice. Before or at any such meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board 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.

11. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

12. Adjournments. The Board of Directors may adjourn any meeting from day to day or for such other time as may be prudent or necessary in the interest of the Association provided that no meeting may be adjourned for a period longer than thirty days.

13. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

## ARTICLE V

### Officers

1. Designation. The principal officers of the Association shall be a President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Directors may appoint a Vice President, an Assistant Secretary, an Assistant Treasurer and such other officers as in their judgment may be necessary.

2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors, at the organization meeting of each new Board, and shall hold office at the pleasure of the Board.

3. Removal of Officers. Upon an affirmative vote of two-thirds of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

4. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the members and of the Board of Directors. He shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including but not limited to the power to appoint committees from among the members from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

5. Secretary. The Secretary shall keep the minutes of all meetings of the members; he shall have the custody of the Seal of the Association; he shall have charge of the membership books and such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

6. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate records of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

## ARTICLE VI

### Indemnification of Officers and Directors

The Association shall indemnify every Director or officer, his heirs, executors, administrators, and representatives against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit, or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit, or proceeding to be liable for gross negligence or willfully misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such manager or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such manager or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in this Article VI contained shall be deemed to obligate the Association to indemnify any member or owner of a condominium unit, who is or has been a director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of the Condominium Declaration as a member or owner of a condominium unit covered thereby.

## ARTICLE VII

### Powers, Rights and Duties of The Association and Members Thereof

1. The Association and its members shall have all the powers, rights, duties and obligations set forth in the Articles of Incorporation for the Association, these By-Laws, rules and regulations pursuant thereto, the Condominium Declaration, and as any of the same may be duly adopted or amended. No transfers of membership in the Association shall be made except as provided herein and no such transfer shall be made upon the books of the Association within ten days next preceding the annual meeting of the Association.

2. The members of the Association and Board of Directors, or each of them, shall have the express authorization, right and power to enter into one or more management agreements with third parties in order to facilitate efficient



operation of the common elements, including the real property described in Article II above. It shall be the primary purpose of such management agreements to provide for the administration, management, repair and maintenance of said property, all improvements thereon designated as project common elements, and the roofs and exterior walls of the residence units.

3. The terms of said management agreements shall be as determined by the Board of Directors to be in the best interests of the Association, and shall be subject to the Articles of Incorporation, these By-Laws and the Declaration.

#### ARTICLE VIII

##### Corporate Seal

1. The Board of Directors shall provide a suitable corporate seal containing the name of the Association, which seal shall be in the custody and control of the Secretary.

2. If and when so directed by the Board of Directors, a duplicate seal may be kept and used by such officer or other person as the Board of Directors shall name.

#### ARTICLE IX

##### Miscellaneous

1. Books and Accounts. Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedure and prudence.

2. Auditing. At the close of each fiscal year, the books and records of the Association may, at the discretion of the Board of Directors, be audited by a certified public accountant. The records kept (either audited or unaudited) shall be available for the inspection by the members, including a statement of income and disbursements for the Association for each fiscal year.

3. Inspection of Books. Financial reports, such as are required to be furnished, and the membership records of the Association shall be available at the principal offices of the Association for inspection at reasonable times by any members.

4. Execution of Association Documents. With the prior authorization of the Board of Directors, all notes, checks and contracts or other obligations shall be executed on behalf of the Association by any two officers of the Association.

5. Fiscal Year. The fiscal year of the Association shall be July 1st through June 30.

## ARTICLE X

### Amendment of By-Laws

1. Amendment by the Members. These By-Laws may be amended by the affirmative vote of three-fourths of the voting strength of the Association present or represented by proxy at any regular or special meeting, provided that a quorum as prescribed in Article III herein, is present at any such meeting. Amendments may be proposed by the Board of Directors or petition signed by at least fifty-one percent of the voting strength of the members. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment shall be voted upon. These By-Laws may not be amended insofar as such amendment would be inconsistent with the recorded restrictions of the property.

2. Amendment by the Directors. These By-Laws may be amended by the affirmative vote of 51% of the Board of Directors present or represented by proxy at any regular or special meeting, provided that a quorum as prescribed in Article IV herein, is present at any such meeting. A statement of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment shall be voted upon. These By-Laws may not be amended insofar as such amendment would be inconsistent with the recorded restrictions on the property.

## ARTICLE XI

### Obligations of the Owners

1. Assessments. Except as is otherwise provided in the Condominium Declaration, all owners shall be obligated to pay the assessments imposed by the Association to meet the common expenses. The assessments shall, except as provided in the Condominium Declaration with respect to insurance premiums, be made pro rata according to the floor area ratio of each unit to (1) the floor area of all units in the individual building in the case of general common elements and (2) to the floor area of all units within the project existing at the time such assessment shall be due in the case of project common elements; provided, however, that for the purposes of this paragraph parking units shall be deemed to contain one quarter the number of square feet found by actual measurement. Assessments shall be due in advance on the first day of each month, or otherwise as may be determined by the Board of Directors and the Condominium Declaration. Contributions for assessments shall be prorated if the ownership of a condominium unit commences on a day other than the first day of the assessment period. A member shall be deemed to be in good standing and entitled to vote at any annual or at a special meeting of members, within the meaning of these By-Laws, if, and only if, he shall have fully paid all assessments made or levied against him and the condominium unit owned by him.

### 2. Maintenance and Repair.

(a) Every owner must perform promptly at his own expense all maintenance and repair work within his own unit. An owner shall not do an act or any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament.

(b) All the repairs of internal installations of the unit such as water, light, gas, power, sewage, telephone, sanitary installations, doors, windows, electrical fixtures, appliances and equipment installed within the unit commencing at a point at which the utility lines, pipes, wires, conduits or systems (which for brevity are hereinafter referred to as "utilities") enter the unit, shall be at the owner's expense. Utility fixtures and appliances (but not lines, pipes, wires, conduits, or systems) which are not located within a unit which exist for the purpose of providing utility service only for one unit shall be maintained and kept in repair by the owner of that unit.

(c) An owner shall be obligated to reimburse the Association promptly upon receipt of its statement for any expenditures incurred by it in repairing or replacing any general or limited common element damaged by his negligence or by the negligence of his tenants, invitees, or agents.

3. General. Each owner shall comply strictly with the provisions of the recorded Condominium Declaration. Each owner shall always endeavor to observe and promote the cooperative purposes for the accomplishment of which this condominium project was built.

4. Use of Units - Internal Changes.

(a) All residential units shall be utilized for residential purposes only. All parking units shall be utilized solely for vehicle parking and incidental storage of personal property.

(b) An owner shall not make structural modifications or alterations to his unit or installations located therein without the written approval of the Board of Directors. The Board of Directors shall be notified in writing of the intended modifications through the President of the Board of Directors.

5. Right of Entry. An owner shall and does grant the right of entry to the Managing Agent or Board of Directors of the Association, to have access to his unit from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the general common elements therein or accessible therefrom, or for making emergency repair therein necessary to prevent damage to the general common elements or to another unit or units. Damage to the interior or any part of a unit as a result of such entry thereof shall be a common expense of all of the owners. Provided, however, that if such entry, resulting in damage, was made necessary as a result of the negligence or malfeasance of the unit owner, then such unit owner shall be responsible for all of such damage.

6. All units of Breakaway West which are leased by a Member of the Association to a third party shall be subject to the attached "Addendum to All Leases at Breakaway West" and such Addendum shall be kept on file with the Manager. Only persons listed on that Addendum will have access to the Breakaway West property and the use of the common facilities.

7. Rules and Regulations. Attached to and part of these By-Laws are copies of the "Breakaway West Rules and Regulations". These Rules and Regulations apply to all persons using the Breakaway West facilities.

8. The costs incurred by the Association to prepare and distribute the "right of first refusal" required by our Condominium Declarations shall be accounted for by the Treasurer and billed directly to the seller. If this is not paid on or before closing, it shall be filed as an encumbrance against the unit and paid at the time of closing.

9. Funding Fee. The Board of Directors shall from time to time determine a Funding Fee to be accumulated by each condominium unit. This Funding Fee shall be held by the Association and used as working capital. This Funding Fee will be apportioned among units on an equal basis. As of 9/1/83, the amount of the Funding Fee for each unit of Breakaway West will be \$500. For any unit where the full \$500 Funding Fee has not yet been accumulated, the Treasurer will cause to be billed to this unit \$5.00 per month until such time as the \$500 has been accumulated. The Funding Fee will be returned to the owner of a condominium unit when that unit is sold. The refund will occur at the closing and also at the closing the new owner will cause to be transferred to the Association the appropriate Funding Fee.

#### ARTICLE XII

##### Conveyances and Encumbrances

Corporate property may be conveyed or encumbered by authority of the Board of Directors or such other person or persons to whom such authority may be delegated by resolution of the Board. Conveyances or encumbrances shall be by instrument executed by the President and by the Secretary or the Treasurer or an Assistant Secretary or Assistant Treasurer, or executed by such other person or persons to whom such authority may be delegated by the Board.

#### ARTICLE XIII

##### Pronouns

Masculine pronouns used in this contract shall include the masculine and feminine gender.