

i. Give full faith and credit to valid protective orders entered by the courts of any state or Indian tribe and enforce those orders without further order of the Court.

(b) All calls regarding domestic violence shall be responded to immediately. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authorized authority if the law enforcement officer acts in good faith so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceeding resulting from arrests made for domestic violence or any crimes involving domestic violence.

(Ord. No. 407, 9-26-2002)

Sec. 50B-16. Referral requirement.

(a) Any physician, physician's assistant, nurse, community health representative, social worker, psychologist, dentist, school teacher, adult services worker, law enforcement officer, or substance abuse counselor who has reasonable basis to believe that a person has been a victim of domestic violence shall provide information to the person to make such person aware of the Tribal Domestic Violence Program.

(b) Penalties for failure to make referral. Any person who knowingly fails to make a referral as required under this section shall be fined an amount not less than \$100.00 nor more than \$300.00.

(Ord. No. 407, 9-26-2002; Ord. No. 671, 3-7-2003)

Sec. 50B-17. Construction of chapter.

This chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This chapter shall not be construed as relieving any person or institution of the duty to report to the appropriate authorities if the person or institution has cause to suspect that a child is abused or neglected.

(Ord. No. 407, 9-26-2002)

Sec. 50B-18. Remedies not exclusive.

The remedies provided by this chapter are not exclusive but are additional to remedies provided elsewhere in the Cherokee Code.

(Ord. No. 407, 9-26-2002)

Sec. 50B-19. No defense to criminal prosecution.

The granting of a protective order, approval of a consent agreement, or the granting of any other relief or the institution of any other enforcement proceedings under this chapter shall not be construed to afford a defense to any person or persons charged with a crime pursuant to the criminal laws of the Eastern Band of Cherokee Indians or other law.
(Ord. No. 407, 9-26-2002)

Sec. 50B-20. Severability.

If a court finds any clause or section of this chapter to be invalid, such clause or section shall be severed, and the remainder of this chapter shall remain in full force and effect.

(Ord. No. 407, 9-26-2002)

Sec. 50B-21. Repeal of inconsistent law.

Ordinance 97, effective February 8, 1990, Ordinance 355-C (1998), Ordinance No. 640 (1999), Chapter 50C of the Cherokee Code, and all other ordinances or resolutions that are inconsistent with this chapter are hereby repealed.

(Ord. No. 407, 9-26-2002)

BE IT FINALLY ORDAINED that this amendment shall be effective upon ratification by the Principal Chief, and all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by John Ayers

TABLED

16.

Cherokee Council House
Cherokee, Qualla Boundary (NC)

Date: JUN 03 2010

ORDINANCE NO. 358 (2010)

WHEREAS, the Tribe does not have an established law governing the creation, alteration, termination and management of condominiums on Tribal property; and

WHEREAS, Ray and Darlene Bradley are requesting that the Tribe enact the attached legislation entitled "Tribal Condominium Act."

NOW, THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that the Tribal Council hereby adopts the attached legislation entitled "Tribal Condominium Act" for the creation, alteration, termination and management of condominiums on Tribal property.

BE IT FURTHER ORDAINED, that this Act shall be assigned a section in the Cherokee Code.

BE IT FINALLY ORDAINED that this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by: Ray and Darlene Bradley

Tribal Condominium Act

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Article 1 - General Provisions.

1-101. Purpose

The purpose of this Act (the "Act") is to create a statute by which both Enrolled Members of the Eastern Band of the Cherokee Indians (the "Tribe") and non-Enrolled Members may be jointly governed by a unified regulations to enjoy the benefits of residence in a Condominium on land held in trust by the U.S. government for the benefit of the Tribe (the "Boundary").

1-102. Applicability.

- (1) This Act applies to all Condominiums (the "Condominiums") created within the Boundary governed by the Tribe subsequent to May 1, 2009 and does not invalidate previous contracts or arrangements.
- (2) This Act does not apply to Condominiums or Units located outside the Boundary, but the Act shall apply to all Condominiums including, without limitation, contracts for sale of Condominiums located within the Boundary regardless of the location of execution of such contracts.

1-103. Definitions.

In the Declaration and Bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

- (1) "Act" means this document.
- (2) "Affiliate of a Declarant" means any person who controls, is controlled by, or is under common control with a Declarant.
 - A. A person "controls" a Declarant if the person:
 - (i) Is a general partner, officer, director, or employer of the Declarant,
 - (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the Declarant,
 - (iii) Controls in any manner the election of a majority of the directors of the Declarant, or

- (iv) Has contributed more than twenty percent (20%) of the capital of the Declarant.
- B. A person "is controlled by" a Declarant if the Declarant:
- (i) Is a general partner, officer, director, or employer of the person,
 - (ii) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the person,
 - (iii) Controls in any manner the election of a majority of the directors of the person, or
 - (iv) Has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.
- (3) "Allocated Interests" means the undivided interests in the Common Elements, the Common Expense liability, and votes in the Association allocated to each Unit.
- (4) "Assignee" means a Person to whom a claim or right to Real Estate has been transferred which, with respect to this Act, specifically excludes Land.
- (5) "Association" means the Unit Owners' Association.
- (6) "Boundary" means the Qualla Boundary, or the reservation of the Eastern Band of the Cherokee Indians, which is a land trust held for the benefit of the Tribe by the U.S. government.
- (7) "Bylaws" means the governing rules of the Association which may not violate the provisions of this Act
- (8) "Common Elements" means all portions of a Condominium other than the Units, with the specific exclusion that the only interest in any Land located within the Boundary, regardless of whether the Condominium is built upon such Land, is limited to an interest in the Lease by which such Land is controlled by the Association, subject to any terms and conditions of such Lease. In no case will this definition of Common Elements be interpreted

to include any interest in the Possessory Holding of any Land within the Boundary or any Land Held in Trust by the Tribe.

- (9) "Common Expenses" means expenditures made by or for the financial liabilities of the Association, together with any allocations to Reserves.
- (10) "Common Expense Liability" means the liability for Common Expenses allocated to each Unit.
- (11) "Condominium" means Real Estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, with the exception that any remainder shall not include any Land Held in Trust by the Tribe or held by Possessory Holding. Real Estate is not a Condominium unless the undivided interests in the Common Elements are vested in the Unit Owners.
- (12) "Conversion Building" means a building that at any time before creation of the Condominium was occupied wholly or partially by persons other than Purchasers or by persons who occupy with the consent Purchasers.
- (13) "Declarant" means any person or group of persons acting in concert who:
 - A. As part of a common promotional plan offers to dispose of his or its interest in a Unit not previously disposed of or
 - B. Reserves or succeeds to any Special Declarant Right.
- (14) "Declaration" means any instruments, however denominated, which create a Condominium, and any amendments to those instruments.
- (15) "Development Rights" means any right or combination of rights reserved by a Declarant in the Declaration to add Real Estate to a Condominium; to create Units, Common Elements, or Limited Common Elements within a Condominium; to subdivide Units or convert Units into Common Elements; or to withdraw Real Estate from a Condominium.
- (16) "Dispose" or "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.
- (17) "Enrolled Member" means any person recognized by the Bureau of Indian Affairs and the Tribe as members of the Eastern Band of Cherokee Indians of North Carolina or their descendants who are eligible for enrollment with the Tribe.
- (18) "Executive Board" means the body, regardless of name, designated in the Declaration to act on behalf of the Association.

- (19) "Identifying Number" means a symbol or address that identifies only one Unit in a Condominium.
- (20) "Land" or "Land Held in Trust" means any property controlled by the Tribe or by an Enrolled Member of the Tribe under a Possessory Holding.
- (21) "Lease" means any agreement for use of Land or any Land Held in Trust.
- (22) "Leasehold Condominium" means a Condominium in which all or a portion of the Real Estate is subject to a Lease, the expiration or termination of which will terminate the Condominium or reduce its size.
- (23) "Leasehold Interest" means the ownership of a Leasehold Condominium.
- (24) "Lessee" means the party entitled to present possession of a leased Unit whether Lessee, Sub-Lessee or Assignee.
- (25) "Limited Common Element" means a portion of the Common Elements allocated by the Declaration or for the exclusive use of one or more but fewer than all of the Units.
- (26) "Master Association" means an organization described in 2-120, whether or not it is also an Association described in 3-101.
- (27) "non-Enrolled Member" means any person not recognized by the Bureau of Indian Affairs and the Tribe as members of the Eastern Band of Cherokee Indians of North Carolina or their descendants who are not eligible for enrollment with the Tribe.
- (28) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a Unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a Condominium located in the Boundary, is not an Offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the Condominium is located.
- (29) "Person" means a natural person, corporation, business trust, estate, trust, partnership, Association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity, including the Tribe.
- (30) "Possessory Holding" means land titled in the United States but parceled to an Enrolled Member(s). The individual Possessory Holdings are tribally recognized by Certificates of Possessory Holding. Possessory Holdings are permanent and may never ripen into a Title.
- (31) "Public Offering Statement" means an invitation to participate in the purchase of a Condominium that is extended to any Person.

- (32) "Purchaser" means any person, other than a Declarant or a person in the business of selling Real Estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit, thus becoming a Unit Owner, other than
- A. A leasehold interest (including renewal options) of less than five years, or
 - B. As security for an obligation.
- (33) "Real Estate" means any leasehold or other estate or interest in, over, or under Land (though specifically excluding such Land), including structures, fixtures, and other improvements which by custom, usage, or law, pass with a conveyance of Land though not described in the contract of sale or instrument of conveyance, and not including such Land. "Real Estate" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.
- (34) "Real Property" means the Condominium, Common Elements, and Limited Common Elements.
- (35) "Reserve" means funds allocated by the Association for a special purpose or future use.
- (36) "Residential Purposes" means use for dwelling or recreational purposes, or both.
- (37) "Special Declarant Rights" means rights reserved for the benefit of a Declarant to complete improvements indicated on plats and plans filed with the Declaration (2-109); to exercise any Development Right (2-110); to maintain sales offices, management offices, signs advertising the Condominium, and models (2-115); to use easements through the Common Elements for the purpose of making improvements within the Condominium or within Real Estate which may be added to the Condominium (2-116); to make the Condominium part of a larger Condominium (2-121); or to appoint or remove any officer of the Association or any Executive Board member during any period of Declarant control (3-103).
- (38) "Sub-Lease" means an arrangement in which the lessee in a lease assigns the lease to a third party.
- (39) "Sub-Lessee" means a holder of a Sub-Lease.
- (40) "Tax or Assessment" means any fees due to the Tribe or any other jurisdiction as a result of the ownership or sale of a Condominium.
- (41) "Time Share" means a right to occupy a Unit or any of several Units during five or more separated time periods over a period of at least five years,

including renewal options, whether or not coupled with a freehold estate or an estate for years in a Time Share project or a specified portion thereof, including, but not limited to, a vacation license, prepaid hotel reservation, club membership, limited partnership, vacation bond, or a plan or system where the right to use is awarded or apportioned on the basis of points, vouchers, split, divided, or floating use.

- (42) "Title" means a formal document that evidences ownership.
- (43) "Transferor Declarant" is the person who receives the Special Declarant Rights upon recordation of transfer of such rights.
- (44) "Tribe" means the Eastern Band of the Cherokee Indians.
- (45) "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to 2-104.
- (46) "Unit Boundaries" means the defining physical limits of the ownership of the Condominium.
- (47) "Unit Owner" means a Declarant, a Purchaser or other person who owns a Unit, or a lessee of a Unit in a leasehold Condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the Unit from the Condominium, but does not include a person having an interest in a Unit solely as security for an obligation.

1-104. Variation; Power of Attorney or Proxy to Declarant.

- (1) Except as specifically provided in specific sections of this Act, the provisions of this Act may not be varied by the Declaration or Bylaws.
- (2) The provisions of this Act may not be varied by agreement; however, after breach of a provision of this Act, rights created hereunder may be knowingly waived in writing.
- (3) If a Declarant, in good faith, has attempted to comply with the requirements of this Act and has substantially complied with the Act, nonmaterial errors or omissions shall not be actionable.
- (4) Notwithstanding any other provision of this Act, a Declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this Act, the Declaration, or the Bylaws.

1-105. Separate Titles and Taxation.

- (1) If there is any Unit Owner other than a Declarant, each Unit that has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of Real Estate.
- (2) If there is any Unit Owner other than a Declarant, each Unit must be separately taxed and assessed, and no separate Tax or Assessment may be rendered against any Common Elements for which a Declarant has reserved no Developmental Rights.
- (3) Any portion of the Common Elements for which the Declarant has reserved any Developmental Right must be separately taxed and assessed against the Declarant, and the Declarant alone is liable for payment of such Tax or Assessment.

1-106. Applicability of Ordinances, Regulations, and Building Codes.

A zoning, subdivision, or building code or other Real Estate use law, ordinance, or regulation may not prohibit the Condominium form of ownership or impose any requirement upon a Condominium which it would not impose upon a substantially similar development under a different form of ownership. No provision of this Act invalidates or modifies any provision of any zoning, subdivision, or building code or other Real Estate use law, ordinance, or regulation.

Article 2 - Creation, Alteration, and Termination of Condominiums.

2-101. Execution and Recordation of Declaration.

A Declaration creating a Condominium shall be executed in the same manner as a Possessory Holding.

2-102. Unit Boundaries.

Except as provided by the Declaration:

- (1) If walls, floors or ceilings are designated as Unit Boundaries, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors, or ceilings are a part of the Common Elements.
- (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
- (3) Subject to the provisions of paragraph 2-102(2) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit is part of the Unit.
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

2-103. Construction and Validity of Declaration and Bylaws.

- (1) All provisions of the Declaration and Bylaws are severable.
- (2) Any rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to 3-102.

- (3) In the event of a conflict between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with this Act.
- (4) Title to a Unit and Common Elements will never include Title in Land Held in Trust or Possessory Holdings other than through a common interest in the Lease of Land or Possessory Holdings, and such Title is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the Declaration to comply with this Act. Whether a substantial failure to comply with this Act impairs marketability shall be determined by any Tribal law affecting marketability, and in the absence of specific law shall rely on the law of the State of North Carolina.

2-104. Description of Units.

A description of each Condominium Unit will set forth the name of the Condominium, the identifying number of the Unit, a description of Real Property and all rights, obligations, and interests appurtenant to that Unit which were created by the Declaration or Bylaws.

2-105. Contents of Declaration.

The Declaration for a Condominium must contain:

- (1) The name of the Condominium, which must include the word "Condominium" or be followed by the words "a Condominium", and the name of the Association;
- (2) A legally sufficient description of the Real Estate included in the Condominium;
- (3) A statement of the maximum number of Units which the Declarant reserves the right to create;
- (4) A description by reference to the plats or plans described in 2-109 of the boundaries of each Unit created by the Declaration, including the Unit's *identifying number*;
- (5) A description of any Limited Common Elements, other than those specified in subsections 2-102 (2) and 2-102 (4), as provided in 2-109 (2) (H);
- (6) A description of any Real Estate (except Real Estate subject to Development Rights) which may be allocated subsequently as Limited Common Elements, other than Limited Common Elements specified in

subsections 2-102 (2) and 2-102 (4), together with a statement that they may be so allocated;

- (7) A description of any Development Rights and other Special Declarant Rights reserved by the Declarant, together with a legally sufficient description of the Real Estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;
- (8) If any Development Right may be exercised with respect to different parcels of Real Estate at different times, a statement to that effect, together with:
 - A. Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each Development Right or a statement that no assurances are made in those regards, and
 - B. A statement as to whether, if any Development Right is exercised in any portion of the Real Estate subject to that Development Right, that Development Right must be exercised in all or in any other portion of the remainder of that Real Estate;
- (9) Any other conditions or limitations under which the Development Rights described in 2-105 (8) above may be exercised or will lapse;
- (10) An allocation to each Unit of the Allocated Interests in the manner described in 2-107;
- (11) Any restrictions on use, occupancy, or alienation of the Units;
- (12) The recording data for recorded easements and licenses appurtenant to or included in the Condominium or to which any portion of the Condominium is or may become subject by virtue of a reservation in the Declaration; and
- (13) All matters required by 2-106, 2-107, 2-108, 2-109, 2-115, 2-116, and 3-103 (4).

2-106. Leasehold Condominiums.

- (1) Any lease, or a memorandum thereof, the expiration or termination of which may terminate the Condominium or reduce its size shall be recorded in a manner identical to a Possessory Holding. Every lessor of those leases must sign the Declaration, and the Declaration shall state:
 - A. Where the complete lease may be inspected;

- B. The date on which the lease is scheduled to expire;
 - C. A legally sufficient description of the Real Estate subject to the lease;
 - D. Any right of the Unit Owners to redeem the reversion and the manner whereby those rights may be exercised or a statement that they do not have those rights;
 - E. Any right of the Unit Owners to remove any improvements after the expiration or termination of the lease or a statement that they do not have those rights; and
 - F. Any rights of the Unit Owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights.
- (2) After the Declaration for a leasehold Condominium is recorded, neither the Lessor nor his successor in interest may terminate the Leasehold Interest of a Unit Owner who, after demand, makes timely payment of his share of the rent determined in proportion to his Common Element interest and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A Unit Owner's Leasehold Interest is not affected by failure of any other person to pay rent or fulfill any other covenant under the lease.
 - (3) Acquisition of the Leasehold Interest of any Unit Owner by the owner of the reversion or remainder does not merge the Leasehold and other Real Estate interests unless the Leasehold Interests of all Unit Owners subject to that reversion or remainder are acquired.
 - (4) If the expiration or termination of a Lease decreases the number of Units in a Condominium, the Allocated Interests shall be reallocated. Reallocations shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

2-107. Allocation of Common Element, Interests, Votes, and Common Expenses.

- (1) The Declaration shall allocate a fraction or percentage of undivided interests in the Common Elements and in the Common Expenses of the Association and a portion of the votes in the Association to each Unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of Units owned by the Declarant.
- (2) If Units may be added to or withdrawn from the Condominium, the Declaration must state the formulas to be used to reallocate the Allocated

Interests among all Units included in the Condominium after the addition or withdrawal.

- (3) The Declaration may provide:
 - A. That different allocations of votes shall be made to the Units on particular matters specified in the Declaration;
 - B. For cumulative voting only for the purpose of electing members of the Executive Board; and
 - C. For class voting on specified issues affecting the class if necessary to protect valid interests of the class.
 - D. A Declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on Declarants by this Act nor may Units constitute a class because they are owned by a Declarant.
- (4) Except for minor variations due to rounding, the sum of the undivided interests in the Common Elements and Common Expense liabilities allocated at any time to all the Units must each equal one if stated as fractions or one hundred percent (100%) if stated as percentages. If the Declaration allocates to each of the Units a fraction or percentage of ownership of the Common Elements that results in an actual total of such fractions or percentages that is greater or less than the actual whole of such ownership, each Unit's ownership of the Common Elements shall be automatically reallocated so that each Unit is allocated the same fraction or percentage of ownership of the actual whole as that Unit had of the actual total that was greater or less than the actual whole. The Declarant or the Association shall file an amendment to the Declaration reflecting such reallocation which amendment need not be executed by any other party.
- (5) The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

2-108. Limited Common Elements.

- (1) Except for the Limited Common Elements described in subsections 2-102(2) and 2-102(4), the Declaration shall specify to which Unit or Units each Limited Common Element is allocated. That allocation may not be altered without the unanimous consent of the Unit Owners whose Units are affected.

- (2) Except as the Declaration otherwise provides, a Limited Common Element may be reallocated by an amendment to the Declaration executed by all the Unit Owners between or among whose Units the reallocations is made. The persons executing the amendment shall provide a copy thereof to the Association, which shall record it. The amendment shall be recorded in the same manner as a Possessory Holding in the names of the parties and the Condominium.
- (3) A Common Element not previously allocated as a Limited Common Element may not be so allocated except by unanimous consent or pursuant to provisions in the Declaration made in accordance with 2-105. All such allocations shall be made by amendments to the Declaration and shall become effective in accordance with 2-117.

2-109. Plats and Plans.

- (1) The Declarant shall file with the Tribe the Condominium's plat or plan and the plat or plan shall be considered a part of the Declaration.
- (2) Each plat or plan or combination thereof must show:
 - A. The name and a survey or general schematic map of the entire Condominium;
 - B. The location and dimensions of all Real Estate and the location and dimensions of all existing improvements within that Real Estate;
 - C. The location and dimensions of any Real Estate subject to Development Rights, labeled to identify the rights applicable to each parcel;
 - D. The extent of any encroachments by or upon any portion of the Condominium;
 - E. The location and dimensions of all easements having specific location and dimensions and serving or burdening any portion of the Condominium;
 - F. The verified statement of an architect certifying that such plats or plans fully and accurately depict the layout, location, ceiling and floor elevations, Unit numbers and dimensions of the Units, as built;
 - G. The certificate by a registered land surveyor that the plats or plans accurately depict the legal boundaries and the physical location of the Units and other improvements relative to those boundaries;

- H. The locations and dimensions of Limited Common Elements; however, parking spaces and the Limited Common Elements described in 2-102(2) and 2-102(4) need not be shown, except for decks, stoops, porches, balconies, and patios;
 - I. A legally sufficient description of any Real Estate in which the Unit Owners will own;
 - J. The distance between noncontiguous parcels of Real Estate comprising the Condominium;
 - K. Any Unit in which the Declarant has reserved the right to create additional Units or Common Elements.
- (3) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the Condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT".
 - (4) Upon exercising any Development Right, the Declarant shall record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section.

2-110. Exercise of Development Rights.

- (1) To exercise any Development Right, the Declarant shall record an amendment to the Declaration (2-117) and comply with 2-109. The Declarant is the Unit Owner of any Units thereby created. The amendment to the Declaration must assign an identifying number to each new Unit created and, except in the case of subdivision or conversion of Units, reallocate the Allocated Interests among all Units. The amendment must describe any Common Elements and any Limited Common Elements thereby created and, in the case of Limited Common Elements, designate the Unit to which each is allocated.
- (2) Development Rights may be reserved within any Real Estate added to the Condominium if the amendment adding that Real Estate includes all matters required by, and is in compliance with, 2-105 and, if a leasehold Condominium, 2-106 and also if the plats and plans include all matters required by 2-109. This provision does not extend the limit on the exercise of Developmental Rights imposed by the Declaration pursuant to 2-105.
- (3) When a Declarant exercises a Development Right to subdivide or convert a Unit previously created into additional Units, Common Elements, or both:

- A. If the Declarant converts the Unit entirely to Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of that Unit among the other Units; or
 - B. If the Declarant subdivides the Unit into two or more Units, whether or not any part of the Unit is converted into Common Elements, the amendment to the Declaration must reallocate all the Allocated Interests of the Unit among the Units created by the subdivision in any reasonable manner prescribed by the Declarant.
- (4) If the Declaration provides that all or a portion of the Real Estate is subject to the Development Right of withdrawal:
- A. If all the Real Estate is subject to withdrawal, and the Declaration does not describe separate portions of Real Estate subject to that right, no part of the Real Estate may be withdrawn after a Unit has been conveyed to a Purchaser; and
 - B. If a portion or portions are subject to withdrawal, no part of a portion may be withdrawn after a Unit in that portion has been conveyed to a Purchaser.

2-111. Alterations of Units.

Subject to the provisions of the Declaration and other provisions of law, a Unit Owner:

- (1) May make any improvements or alterations to his Unit that do not impair the *structural integrity or mechanical systems* or lessen the support of any portion of the Condominium;
- (2) May not change the appearance of the Common Elements or the exterior appearance of a Unit or any other portion of the Condominium without permission of the Association; and
- (3) May, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein, even if the partition is a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of Unit Boundaries.

2-112. Relocation of Boundaries between Adjoining Units.

- (1) Subject to the provisions of the Declaration, the Unit Boundaries between adjoining Units may be relocated upon application to the Association by the Unit Owners. Any such application to the Association must be in such form and contain such data as may be reasonably required by the Association and be accompanied by a plat prepared by an architect or an engineer detailing the relocation of the Unit Boundaries between the affected Units, prepared at the expense of the Unit Owners. If the Unit Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application must state the proposed reallocations. Unless the Executive Board determines within 30 days that the reallocations are unreasonable, the Association, at the expense of the Unit Owners filing the application, shall prepare and record an amendment to the Declaration that identifies the Units involved, states the reallocations, is executed by those Unit Owners and the Association, contains words of conveyance, and is recorded in the same manner as a Possessory Holding.
- (2) The Association, at the expense of the Unit Owners filing the application, shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units and their dimensions and identifying numbers.

2-113. Subdivision of Units.

- (1) If the Declaration expressly so permits, a Unit may be subdivided into two or more Units. Subject to the provisions of the Declaration, upon application of a Unit Owner to subdivide a Unit, the Association, at the expense of the Unit Owner, shall prepare, execute, and record an amendment to the Declaration, including the plats and plans, subdividing that Unit.
- (2) The amendment to the Declaration must be executed by the Unit Owner of the Unit to be subdivided, assign an identifying number to each Unit created, and reallocate the Allocated Interests formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by the Association.

2-114. Easement for Encroachments.

To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, a valid easement for the encroachment exists under this Act. The easement does not relieve a Unit Owner of liability in case of his willful misconduct nor

relieve a Declarant or any other Person of liability for failure to adhere to the plats and plans.

2-115. Use for Sales Purposes.

A Declarant may maintain sales offices, management offices, and models in Units or on Common Elements in the Condominium only if the Declaration so provides and specifies the rights of a Declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a Unit by the Declaration is a Common Element, and if a Declarant ceases to be a Unit Owner, he ceases to have any rights with regard thereto unless it is removed promptly from the Condominium in accordance with a right to remove reserved in the Declaration. Subject to any limitations in the Declaration, a Declarant may maintain signs on the Common Elements advertising the Condominium, subject to the provisions of other Tribal law and ordinances regarding such advertising.

2-116. Easement to Facilitate Exercise of Special Declarant Rights.

Subject to the provisions of the Declaration, a Declarant has such easements through the Common Elements as may be reasonably necessary for the purpose of discharging a Declarant's obligations or exercising Special Declarant Rights whether arising under this Act or reserved in the Declaration.

2-117. Amendment of Declaration.

- (1) Except in cases of amendments that may be executed by a Declarant under 2-109(4) or 2-110, the Association under 2-106, 2-112, or 2-113, or certain Unit Owners under 2-108, 2-112, 2-113, or 2-118, and except as limited by 2-117(4) below, the Declaration may be amended only by affirmative vote of or a written agreement signed by Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated or any larger majority the Declaration specifies. The Declaration may specify a smaller number only if all of the Units are restricted exclusively to nonresidential use.
- (2) No action to challenge the validity of an amendment adopted by the Association pursuant to this section may be brought more than one year after the amendment is recorded.
- (3) Every amendment to the Declaration must be recorded in the same manner as a Possessory Holding and is effective only upon recordation.
- (4) Except to the extent expressly permitted or required by other provisions of this Act, no amendment may create or increase Special Declarant Rights,

increase the number of Units, or change the Unit Boundaries, the Allocated Interest of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

- (5) Amendments to the Declaration required by this Act to be recorded by the Association shall be prepared, executed, recorded, and certified on behalf of the Association by any officer or member of the Executive Board of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

2-118. Termination of Condominium.

- (1) Except in the case of failure to maintain or loss of a Lease, a Condominium may be terminated only by agreement of Unit Owners to which at least eighty percent (80%) of the votes in the Association are allocated, or any larger percentage the Declaration specifies. The Declaration may specify a smaller percentage only if all of the Units in the Condominium are restricted exclusively to nonresidential uses.
- (2) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a Possessory Holding, by the requisite number of Unit Owners. The termination agreement must specify a date after which the agreement will be void unless recorded before that date. A termination agreement is effective only upon recordation in the same manner as a Possessory Holding.
- (3) In the case of a Condominium containing only Units having horizontal boundaries described in the Declaration, a termination agreement may provide that all the Common Elements and Units of the Condominium shall be sold following termination.
- (4) In the case of a Condominium containing any Units having vertical boundaries between Units and described in the Declaration, a termination agreement may provide for sale of the Common Elements, but may not require that the Units be sold following termination, unless the Declaration as originally recorded provided otherwise or unless all the Unit Owners consent to the sale
- (5) The Association, on behalf of the Unit Owners, may contract for the sale of Real Estate in the Condominium, but the contract is not binding on the Unit Owners until approved as required in this section. If any Real Estate in the Condominium is to be sold following termination, title to that Real Estate, upon termination, vests in the Association as trustee for the holders of all

interests in the Units. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to Unit Owners and lien holders as their interests may appear, in proportion to the respective interests of Unit Owners as provided in this section.

Unless otherwise specified in the termination agreement, as long as the Association holds title to the Real Estate, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Real Estate that formerly constituted that Owner's Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all Taxes and Assessments and other obligations imposed on Unit Owners by this Act, the Declaration or the Tribe.

- (6) If the Real Estate constituting the Condominium is not to be sold following termination, title to the Common Elements and, in a Condominium containing only Units having horizontal boundaries described in the Declaration, title to all the Real Estate in the Condominium, vests in the Unit Owners upon termination as tenants in common in proportion to their respective interests as provided in this section, and liens on the Units shift accordingly. While the tenancy in common exists, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Real Estate that formerly constituted the Owner's Unit.
- (7) Following termination of the Condominium, the proceeds of any sale of Real Estate, together with the assets of the Association, are held by the Association as trustee for Unit Owners and holders of liens on the Units as their interests may appear. Following termination, creditors of the Association holding liens on the Units, which were recorded before termination, may enforce those liens in the same manner as any lien holder on the Boundary under the laws and regulations of the Tribe. All other creditors of the Association are to be treated as if they had perfected liens on the Units immediately before termination.
- (8) The respective interests of Unit Owners referred to in this section are as follows:
 - A. Except as provided in this section, the respective interests of Unit Owners are the fair market value of their Units, Limited Common Elements, and Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Unit Owners and becomes final unless disapproved within 30 days after distribution by Unit Owners to which twenty-five percent

(25%) of the votes in the Association are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and Common Element interest by the total fair market values of all the Units and Common Elements.

B. If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Unit Owners are their respective Common Element interests immediately before the termination.

- (9) Except as provided in this section, foreclosure or enforcement of a lien or encumbrance against the entire Condominium does not of itself terminate the Condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the Condominium does not withdraw that portion from the Condominium.
- (10) If a lien or encumbrance against a portion of the Real Estate comprising the Condominium has priority over the Declaration, and the lien or encumbrance has not been released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the Real Estate subject to that lien or encumbrance from the Condominium.

2-120. Master Associations.

- (1) If the Declaration for a Condominium provides that any of the powers described in 3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation (or unincorporated Association) which exercises those or other powers on behalf of one or more Condominiums or for the benefit of the Unit Owners of one or more Condominiums, all provisions of this Act applicable to Unit Owners' Associations apply to any such corporation (or unincorporated Association), except as modified by this section.
- (2) Unless a Master Association is acting in the capacity of an Association described in 3-101, it may exercise the powers set forth in 3-102 only to the extent expressly permitted in the Declarations of Condominiums which are part of the Master Association or expressly described in the delegations of power from those Condominiums to the Master Association.
- (3) If the Declaration of any Condominium provides that the Executive Board may delegate certain powers to a Master Association, the members of the Executive Board have no liability for the acts or omissions of the Master Association with respect to those powers following delegation.

- (4) The rights and responsibilities of Unit Owners with respect to the Unit Owners' Association set forth in 3-103, 3-108, 3-109, and 3-110 apply in the conduct of the affairs of a Master Association only to those persons who elect the board of a Master Association, whether or not those persons are otherwise Unit Owners within the meaning of this Chapter.
- (5) Notwithstanding the provisions of 3-103 with respect to the election of the Executive Board of an Association by all Unit Owners after the period of Declarant control ends and even if a Master Association is also an Association described in 3-101, the certificate of incorporation or other instrument creating the Master Association and the Declaration of each Condominium, the powers of which are assigned by the Declaration or delegated to the Master Association, may provide that the Executive Board of the Master Association must be elected after the period of Declarant control in any of the following ways:
 - A. All Unit Owners of all Condominiums subject to the Master Association may elect all members of that Executive Board.
 - B. All members of the Executive Boards of all Condominiums subject to the Master Association may elect all members of that Executive Board.
 - C. All Unit Owners of each Condominium subject to the Master Association may elect specified members of that Executive Board.
 - D. All members of the Executive Board of each Condominium subject to the Master Association may elect specified members of that Executive Board.

2-121. Merger or Consolidation of Condominiums.

- (1) Any two or more Condominiums may, by agreement of the Unit Owners as provided in 2-121(2), be merged or consolidated into a single Condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant Condominium shall be, for all purposes, the legal successor of all of the pre-existing Condominiums, and the operations and activities of all Associations of the pre-existing Condominiums shall be merged or consolidated into a single Association which shall hold all powers, rights, obligations, assets and liabilities of all pre-existing Associations.
- (2) An agreement of two or more Condominiums to merge or consolidate pursuant to 2-121-1 must be evidenced by an agreement prepared, executed, recorded and certified by the president of the Association of each

of the pre-existing Condominiums following approval by Unit Owners to which are allocated the percentage of votes in each Condominium required to terminate that Condominium. Any such agreement must be executed in the same manner as a Possessory Holding and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the Allocated Interests in the new Association among the Units of the resultant Condominium either:

A. By stating such reallocations or the formulas upon which they are based or

B. By stating the percentage of overall Allocated Interests of the new Condominium which are allocated to all of the Units comprising each of the pre-existing Condominiums and providing that the portion of such percentages allocated to each Unit formerly comprising a part of such pre-existing Condominium shall be equal to the percentages of Allocated Interests allocated to such Unit by the Declaration of the pre-existing Condominiums.

Article 3 - Management of the Condominium.

3-101. Organization of Unit Owners' Association.

A Unit Owners' Association (the "Association") shall be organized no later than the date the first Unit in the Condominium is conveyed. The membership of the Association at all times shall consist exclusively of all the Unit Owners, or following termination of the Condominium, of all persons entitled to distributions of proceeds under 2-118. The Association shall be organized as a profit or nonprofit corporation or as an unincorporated nonprofit Association.

3-102. Powers of Unit Owners' Association.

- (1) Unless the Declaration expressly provides to the contrary, the Association, even if unincorporated, may:
 - A. Adopt and amend Bylaws and rules and regulations;
 - B. Adopt and amend budgets for revenues, expenditures, and Reserves and collect assessments for Common Expenses from Unit Owners;
 - C. Hire and terminate managing agents and other employees, agents, and independent contractors;
 - D. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium;
 - E. Make contracts and incur liabilities;
 - F. Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
 - G. Cause additional improvements to be made as a part of the Common Elements;
 - H. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to 3-112;
 - I. Grant easements, leases, licenses, and concessions through or over the Common Elements;
 - J. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than Limited Common

Elements described in subsections 2-102(2) and 2-102(4) and for services provided to Unit Owners;

K. Impose charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred dollars (\$100.00) under 3-107 for violations of the Declaration, Bylaws, and rules and regulations of the Association, plus charges for late payments as applicable to such violations.

L. Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required by 4-109, or statements of unpaid assessments;

M. Provide for the indemnification of and maintain liability insurance for its officers, Executive Board, directors, employees and agents;

N. Assign its right to future income, including the right to receive Common Expense assessments.

O. Exercise all other powers that may be exercised in this State by legal entities of the same types as the Association; and

P. Exercise any other powers necessary and proper for the governance and operation of the Association.

- (2) The Declaration may not impose limitations on the power of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

3-103. Executive Board Members and Officers.

- (1) Except as provided in the Declaration, the Bylaws, 3-103(2) or other provisions of this Act, the Executive Board may act in all instances on behalf of the Association. In the performance of their duties, the officers and members of the Executive Board shall be deemed to stand in a fiduciary relationship to the Association and the Unit Owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent persons would exercise under similar circumstances in like positions.

- (2) The Executive Board may not act on behalf of the Association to amend the Declaration (2-117), to terminate the Condominium (2-118), or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members (3-103), but the Executive Board may fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Unit Owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than members appointed by the Declarant.
- (3) Within 30 days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Unit Owners, and shall set a date for a meeting of Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the Unit Owners or any larger vote specified in the Declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board.
- (4) Subject to subsection 3-103(5), the Declaration may provide for a period of Declarant control of the Association, during which period a Declarant, or persons designated by him, may appoint and remove the officers and members of the Executive Board. Regardless of the period provided in the Declaration, a period of Declarant control terminates no later than the earlier of:
- A. One hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant;
 - B. Two years after all Declarants have ceased to offer Units for sale in the ordinary course of business; or
 - C. Two years after any Development Right to add new Units was last exercised.
 - D. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of that period, but in that event he may require, for the duration of the period of Declarant control, that specified actions of the Association or Executive

Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

- (5) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units which may be created pursuant to special rights) to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than 60 days after conveyance of fifty percent (50%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.
- (6) Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom must be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.
- (7) The Association shall publish the names and addresses of all officers and board members of the Association within 30 days of the election.

3-104. Transfer of Special Declarant Rights.

- (1) No Special Declarant Right created or reserved under this chapter may be transferred except by an instrument evidencing the transfer recorded in the same manner as a Possessory Holding. The instrument is not effective unless executed by the transferee.
- (2) Upon transfer of any Special Declarant Right, the liability of a Transferor Declarant is as follows:
 - A. A transferor is not relieved of any obligation or liability arising before the transfer, including, but not limited to, liability or obligations relating to warranties. Lack of privity does not deprive any Unit Owner of standing to bring an action to enforce any obligation of the transferor.
 - B. If the successor to any Special Declarant Right is an Affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which relates to the Condominium.
 - C. If a transferor retains any Special Declarant Right, but transfers other Special Declarant Rights to a successor who is not an Affiliate of the

Declarant, the transferor is liable for any obligations or liabilities imposed on a Declarant or by the Declaration relating to the retained Special Declarant Rights and arising after the transfer.

D. A Declarant has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an Affiliate of the Declarant.

- (3) Unless otherwise provided in a Lease, in case of a person acquiring title to all the Real Estate being foreclosed or sold, but only upon their request, succeeds to all Special Declarant Rights related to that Real Estate held by that Declarant, or only to any rights reserved in the Declaration and held by that Declarant to maintain models, sales offices and signs. The judgment or instrument conveying title to all Real Estate shall provide for transfer of only the Special Declarant Rights requested.
- (4) Upon foreclosure or sale of all Units and other Real Estate in a Condominium owned by a Declarant, the Declarant ceases to have any Special Declarant Rights.
- (5) The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:
 - A. A successor to any Special Declarant Right who is an Affiliate of a Declarant is subject to all obligations and liabilities imposed on the transferor related to the Condominium.
 - B. A successor to any Special Declarant Right, other than a successor described in paragraphs (3-104(5)(ii)(c)) and (3-104(5)(ii)(d)) who is not an Affiliate of a Declarant, is subject to all obligations and liabilities:
 - (i) On a Declarant which relate to his exercise or non-exercise of Special Declarant Rights; or
 - (ii) On his Transferor Declarant, other than:
 - (a) Misrepresentations by any prior Declarant;
 - (b) Warranty obligations on improvements made by any previous Declarant, or made before the Condominium was created;
 - (c) Breach of any fiduciary obligation by any previous Declarant or his appointees to the Executive Board; or

(d) Any liability or obligation imposed on the Transferor Declarant as a result of the Declarant's acts or omissions after the transfer.

C. A successor to only a right reserved in the Declaration to maintain models, sales offices, and signs (2-115), if he is not an Affiliate of a Declarant, may not exercise any other Special Declarant Right, and is not subject to any liability or obligation as a Declarant, except the obligation to provide a Public Offering Statement, and any liability arising as a result thereof.

D. A successor to all Special Declarant Rights held by his transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Units under 3-104(3), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Unit owned by the successor, or until recording an instrument permitting exercise of all those rights other than the right held by his transferor to control the Executive Board in accordance with the provisions of 3-103(4) for the duration of any period of Declarant control, and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this subsection, he is not subject to any liability or obligation as a Declarant other than liability for his acts and omissions under 3-103(4).

3-105. Termination of Contracts and Leases of Declarant.

If entered into by or on behalf of the Association before the Executive Board elected by the Unit Owners pursuant to 3-103 takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the Association and a Declarant or an Affiliate of a Declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the Association at any time after the Executive Board elected by the Unit Owners pursuant to 3-103 takes office upon not less than 90 days' notice to the other party. Notice of the substance of the provisions of this section shall be set out in each contract entered into by or on behalf of the Association before the Executive Board elected by the Unit Owners pursuant to 3-103 takes office. Failure of the contract to contain such a provision shall not affect the rights of the Association under this section. This section does not apply to any lease the termination of which would terminate the Condominium or reduce its size, unless the Real Estate subject to that lease was included in the Condominium for the purpose of avoiding the right of the Association to terminate a lease under this section.

3-106. Bylaws.

- (1) The Bylaws of the Association shall provide for:
 - A. The number of members of the Executive Board and the titles of the officers of the Association;
 - B. Election by the Executive Board of the officers of the Association;
 - C. The qualifications, powers and duties, terms of office, and manner of electing and removing Executive Board members and officers and filling vacancies;
 - D. Which, if any, of its powers the Executive Board or officers may delegate to other persons or to a managing agent;
 - E. Which of its officers may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association; and
 - F. The method of amending the Bylaws.
- (2) Any other matters the Association deems necessary or appropriate.

3-107. Upkeep; Damages; Assessments; Fines.

- (1) Except as provided in 3-113(8), the Association is responsible for causing the Common Elements to be maintained, repaired, and replaced when necessary and to assess the Unit Owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a Limited Common Element shall be assessed as provided in 3-115(2). Each Unit Owner is responsible for maintenance, repair and replacement of his Unit. Each Unit Owner shall afford to the Association and when necessary to another Unit Owner access through his Unit reasonably necessary for any such maintenance, repair or replacement activity.
- (2) If damage, for which a Unit Owner is legally responsible and which is not covered by insurance provided by the Association pursuant to 3-113 is inflicted on any Common Element, the Association may direct such Unit Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Unit Owner.
- (3) If damage is inflicted on any Unit by an agent of the Association in the scope of his activities as such agent, the Association is liable to repair such

damage or to reimburse the Unit Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Unit Owner.

- (4) The Bylaws of the Association may in cases when the claim under this section is five hundred dollars (\$500.00) or less provide for hearings before an adjudicatory panel to determine if a Unit Owner is responsible for damages to any Common Element or whether the Association is responsible for damages to any Unit. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each Unit Owner charged or against the Association. Liabilities of Unit Owners so assessed shall be assessments secured by lien under 3-116. Liabilities of the Association may be offset by the Unit Owner against sums owing the Association and if so offset shall reduce the amount of any lien of the Association against the Unit at issue.
- (5) The Declarant alone is liable for maintenance, repair and all other expenses in connection with Real Estate subject to Development Rights.
- (6) Unless a specific procedure for the imposition of fines or suspension of Condominium privileges or services is provided for in the Declaration, a hearing shall be held before the Executive Board or an adjudicatory panel appointed by the Executive Board to determine if any Unit Owner should be fined or if Condominium privileges or services should be suspended pursuant to the powers granted to the Association in 3-102. Any adjudicatory panel appointed by the Executive Board shall be composed of members of the Association who are not officers of the Association or members of the Executive Board. The Unit Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under 3-116. If it is decided that a suspension of Condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. A Unit Owner may appeal a decision of an adjudicatory panel to the full Executive Board by delivering written notice of appeal to the Executive Board within 15 days after the date of the decision. The Executive Board may affirm, vacate, or modify the prior decision of the adjudicatory body.

3-108. Meetings.

- (1) A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the president, a majority of the Executive Board, or by Unit Owners having twenty percent (20%) or any lower percentage specified in the Bylaws of the votes in the Association. Not less than 10 nor more than 50 days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.
- (2) Meetings of the Executive Board shall be held as provided in the Bylaws. At regular intervals, the Executive Board meeting shall provide Unit Owners an opportunity to attend a portion of an Executive Board meeting and to speak to the Executive Board about their issues and concerns. The Executive Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.
- (3) Except as otherwise provided for in the Bylaws, meetings of the Association and Executive Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

3-109. Quorums.

- (1) Unless the Bylaws provide otherwise, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board are present in person or by proxy at the beginning of the meeting.
- (2) Unless the Bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the Executive Board of persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

3-110. Voting; Proxies.

- (1) If only one of the multiple owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the Declaration or Bylaws expressly provides otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the Unit.
- (2) Votes allocated to a Unit may be cast pursuant to a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Unit Owner may not revoke a proxy given pursuant to this section except by written notice of revocation delivered to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates one year after its date, unless it specifies a shorter term.
- (3) If the Declaration requires that votes on specified matters affecting the Condominium be cast by lessees rather than Unit Owners of leased Units:
 - A. The provisions of subsection (1) and (2) apply to lessees as if they were Unit Owners;
 - B. Unit Owners who have leased their Units to other persons may not cast votes on those specified matters; and
 - C. Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were Unit Owners. Unit Owners must also be given notice, in the manner provided in 3-108, of all meetings at which lessees may be entitled to vote.
- (4) No votes allocated to a Unit owned by the Association may be cast.
- (5) The Declaration may provide that on specified issues only a defined subgroup of Unit Owners may vote provided:
 - A. The issue being voted on is of special interest solely to members of the subgroup; and
 - B. All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those Unit Owners entitled to vote.

- (6) For purposes of subdivision (5)(A) above an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the Condominium or substantially affects living conditions of Unit Owners not included in the voting subgroup.

3-111. Tort and Contract Liability.

- (1) Neither the Association nor any Unit Owner except the Declarant is liable for that Declarant's torts in connection with any part of the Condominium which that Declarant has the responsibility to maintain.
- (2) An action alleging a wrong done by the Association must be brought against the Association and not against a Unit Owner.
- (3) If an action is brought against the Association for a wrong which occurred during any period of Declarant control, and if the Association gives the Declarant who then controlled the Association reasonable notice of and an opportunity to defend against the action, such Declarant is liable to the Association:
 - A. For all tort losses not covered by insurance carried by the Association suffered by the Association or that Unit Owner, and
 - B. For all losses which the Association would not have incurred but for a breach of contract. Nothing in this subsection shall be construed to impose strict or absolute liability upon the Declarant for wrongs or actions which occurred during the period of Declarant control.
- (4) In any case where the Declarant is liable to the Association under this section, the Declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the Association. Any statute of limitation affecting the Association's right of action under this section is tolled until the period of Declarant control terminates. A Unit Owner is not precluded from bringing an action contemplated by this section because he is a Unit Owner or a member or officer of the Association. Liens resulting from judgments against the Association are governed by 3-117.

3-112. Conveyance or Encumbrance of Common Elements.

- (1) Portions of the Common Elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by a Declarant, or any larger percentage the Declaration specifies, agree to that action; provided, that all the Unit Owners to which any Limited Common Element is

allocated must agree in order to convey that Limited Common Element or subject it to a security interest. The Declaration may specify a smaller percentage only if all of the Units are restricted exclusively to nonresidential uses. Distribution of the proceeds of the sale of a Limited Common Element shall be as provided by agreement between the Unit Owners to which it is allocated and the Association. Proceeds of the sale or financing of a Common Element (other than a Limited Common Element) shall be an asset of the Association.

- (2) An agreement to convey Common Elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the Condominium is situated, and is effective only upon recordation.
- (3) The Association, on behalf of the Unit Owners, may contract to convey Common Elements, or subject them to a security interest, but the contract is not enforceable against the Association until approved pursuant to subsections (1) and (2). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.
- (4) Any purported conveyance, encumbrance, judicial sale or other voluntary transfer of Common Elements, unless made pursuant to this section, is void.
- (5) A conveyance or encumbrance of Common Elements pursuant to this section shall not deprive any Unit of its rights of access and support.

3-113. Insurance.

- (1) Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent available:
 - C. Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and

- D. Liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.
- (2) In the case of a building containing Units having horizontal boundaries described in the Declaration, the insurance maintained under subdivision (1)(A), to the extent reasonably available, shall include the Units, but need not include improvements and betterments installed by Unit Owners.
- (3) If the insurance described in subsection (1) or (2) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners. The Declaration may require the Association to carry any other insurance, and the Association in any event may carry any other insurance it deems appropriate to protect the Association or the Unit Owners.
- (4) Insurance policies carried pursuant to subsection (1) must provide that:
- A. Each Unit Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or membership in the Association;
- B. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his household;
- C. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy; and
- D. If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.
- (5) Any loss covered by the property policy under subsections (1)(A) and (2) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Unit Owners and lien holders as their interests may appear. Subject to the provisions of subsection (8), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds

after the property has been completely repaired or restored, or the Condominium is terminated.

- (6) An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his own benefit.
- (7) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Unit Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Unit Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.
- (8) Any portion of the Condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless:
 - A. The Condominium is terminated,
 - B. Repair or replacement would be illegal under any Tribal or local health or safety statute or ordinance, or
 - C. The Unit Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Unit Owners not to be rebuilt or owners assigned to Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and Reserves is a Common Expense. If the entire Condominium is not repaired or replaced,
 - (i) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium,
 - (ii) The insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of those Units and the owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interest may appear, and
 - (iii) The remainder of the proceeds shall be distributed to all the Unit Owners or lien holders, as their interest may appear, in proportion to their Common Element interest. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are

automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, 2-118 governs the distribution of insurance proceeds if the Condominium is terminated.

- (9) The provisions of this section may be varied or waived in the case of a Condominium all of whose Units are restricted to nonresidential use.

3-114. Surplus Funds.

Unless otherwise provided in the Declaration, any surplus funds of the Association remaining after payment of or provisions for Common Expenses and any prepayment of Reserves must be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense assessments.

3-115. Assessments for Common Expense.

- (1) Until the Association makes a Common Expense assessment, the Declarant shall pay all the Common Expenses. After any assessment has been made by the Association, assessments thereafter must be made at least annually by the Association.
- (2) Except for assessments under subsections (3), (4), and (5), all Common Expenses must be assessed against all the Units in accordance with the allocations set forth in the Declaration pursuant to 2-107. Any past due Common Expense assessment or installment thereof bears interest at the rate established by the Association not exceeding eighteen percent (18%) per year.
- (3) To the extent required by the Declaration:
 - A. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element must be assessed against the Units to which that Limited Common Element is assigned, equally, or in any other proportion that the Declaration provides;
 - B. Any Common Expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited; and
 - C. The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

- (4) Assessments to pay a judgment against the Association (3-117) may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.
- (5) If any Common Expense is caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against his Unit.
- (6) If Common Expense liabilities are reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

3-116. Lien for Assessments.

- (1) Any assessment levied against a Unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that Unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the Unit is located in the manner provided herein. Unless the Declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to 3-102, 3-107, and 3-115 are enforceable as assessments under this section.
 - A. An Association may not foreclose an Association assessment lien if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the Association solely associated with fines imposed by the Association.
 - B. An Association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any Unit Owner unless the fee is expressly allowed in the Declaration..
- (2) The lien under this section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for Real Estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or other valid liens.
- (3) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years.
- (4) This section does not prohibit actions to recover sums for which subsection (1) creates a lien or prohibit an Association taking a deed in lieu of foreclosure.

(5) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the Unit Owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (A) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars (\$1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the Unit Owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the Association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (4) of this section or 4-117.

A. A Unit Owner may not be required to pay attorneys' fees and court costs until the Unit Owner is notified in writing of the Association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the Unit Owner in the Association's records. The notice shall set out the outstanding balance due as of the date of the notice and state that the Unit Owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the Unit Owner pays the outstanding balance within this period, then the Unit Owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the Unit Owner of the opportunity to contact a representative of the Association to discuss a payment schedule for the outstanding balance as provided in subsection (B) of this section and shall provide the name and telephone number of the representative.

B. The Association, acting through its Executive Board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the Association nor the Unit Owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the Unit Owner has been given notice as required in subsection (A) of this section.

(6) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which