

BYLAWS
OF
NEPENTHE HOMEOWNERS ASSOCIATION

ARTICLE I

Identity

Section 1. Declaration. These Bylaws shall govern the operation of Nepenthe Homeowners Association (the "Association"), an Arizona nonprofit corporation created pursuant to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Nepenthe recorded December 1, 1995, in Book 317, at page 605-670, official records of Yavapai County, Arizona (the "Declaration"), which by this reference is incorporated herein. Any amendments or supplements to the Declaration shall automatically be incorporated herein, and all references to the Declaration shall be deemed to include any such amendments or supplements.

Section 2. Terms. Terms used herein that are defined in the Declaration shall have the same meanings as in the Declaration.

Section 3. Priority of Declaration and Articles. The provisions of the Declaration and the Articles shall have priority over these Bylaws, and any provision hereof which is contrary to or inconsistent with the Declaration or the Articles shall be void to the extent of such inconsistency.

Section 4. Principal Office. The principal office of the Association shall be located initially at 2100 Shelby Drive, Sedona, Arizona 86336.

Section 5. Seal. The Board of Directors may obtain a seal for the Association in a form approved by the Board.

ARTICLE II

Membership

Section 1. Members. Membership in the Association shall be limited as set forth in the Declaration, the Articles, and these Bylaws.

Section 2. Meetings. Meetings of the Members shall be held within the Property or at a meeting place as reasonably close thereto as possible. Unless unusual conditions exist, meetings of Members shall not be held outside Sedona, Arizona. Annual meetings of the Members shall be held in January each year. Notwithstanding the foregoing, the Board may reschedule an annual meeting to another reasonable date upon provision of notice to the Members as provided in Article II, Section 4.

Section 3. Special Meetings. A special meeting of the Members shall be promptly scheduled by the Board in response to:

- (i) the vote of the Board itself, or
- (ii) a written request for a special meeting signed by Members representing at least fifteen percent (15%) of the total voting power of the Members entitled to vote on the matter to be considered at the special meeting.

Section 4. Notice of Meetings. Notice of annual and special meetings shall be given by the Board to Members by mailing a copy of each notice, postage prepaid, addressed to each Member at the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. This notice shall be given not less than ten (10) nor more than ninety (90) days before the date of any meeting at which Members are required or permitted to take any action. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called. Any Member may waive notice of any meeting before, during or after the meeting.

Section 5. Voting. The voting rights of the Members shall be as provided in the Declaration.

Section 6. Quorum. A quorum of Members for any meeting shall be constituted by a Majority of Members represented in person or by proxy. Unless the vote of a greater number is required by these Bylaws, the Articles, the Declaration or applicable law, the affirmative vote of a majority of a quorum of Members (as defined in the Declaration) shall be binding as the act of the Members. A meeting of Members shall not be organized, and no business of the Association shall be transacted at any meeting of Members, unless a quorum of Members is present at the meeting in person or by proxy.

Section 7. Adjourned Meetings. If any meeting of Members cannot be organized because the quorum requirements have not been satisfied, a majority of the Members who are present, either in person or by proxy, may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall be as provided in Article II, Section 6 of these Bylaws. If a time and place for the adjourned meeting is not fixed by

those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and date of the adjourned meeting shall be given to the Members in the manner prescribed in Article II, Section 4 of these Bylaws.

Section 8. Action Taken Without a Meeting. The Members shall have the right, pursuant to applicable Arizona law, as may be amended from time to time, to take any action in the absence of a meeting which they could take at a meeting by obtaining from the written consent of Members to resolutions specifying the action. The foregoing written consent of Members shall be unanimous, unless Arizona law allows the action to be taken with the written consent of a lesser percentage, in which event the action may be taken upon the written consent of the greater of (a) the percentage required under Arizona law, or (b) the percentage required under the Declaration and the Bylaws.

Section 9. Proxy. Any form of proxy or written ballot distributed by any Person to the Members shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the individual or individuals authorized to exercise the proxy and the length of time it will be valid.

Section 10. Order of Business. Unless the Board directs otherwise, the order of business at all meetings of the Members shall be as follows:

- (a) Verification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Appointment of inspectors of election, when required.
- (g) Announcement of the intent to cumulate votes, when required.
- (h) Election of members of the Board, when required.
- (i) Unfinished business.

(j) New business.

(k) Adjournment.

ARTICLE III

Board of Directors

Section 1. Number and Qualification. The business, property and affairs of the Association shall be managed, controlled and conducted by a Board of Directors. The initial Board of Directors shall consist of three members. The number of directors may be altered from time to time by resolution of a majority vote of the Board of Directors, but only within the limits prescribed by the Articles. 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 members of the Board of Directors and hold office until his successor is elected and shall qualify.

Section 2. Powers and Duties. Subject to any restrictions set forth in the Declaration, 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 otherwise directed to be exercised and done by the Members or the President. 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 Bylaws, the Articles and the Declaration and shall also include the power to promulgate such rules and regulations pertaining to the rights and duties of Members of the Association, and all other matters, as may be deemed proper and which are consistent with the foregoing. The Board of Directors may delegate to one or more committees thereof, and to other Persons, such duties and powers, all as appears to the Board of Directors to be in the best interests of the Association and to the extent permitted by law.

Section 3. Election and Term of Office. The members of the Board shall be elected by a plurality of votes cast at the annual meeting of the Members. Notwithstanding anything in the Bylaws or the Articles to the contrary, for so long as Developer is the only Member entitled to vote with respect to the election of Members of the Board, Developer may appoint the members of the Board without a meeting of Members or an election. A director shall serve until removed or until his successor is duly elected and qualified. Any director may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation of a director shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

Section 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 less than a quorum, or by the remaining director if there be only one, and each individual so elected shall be a director until his successor is duly elected and shall qualify.

Section 5. Compensation. No compensation shall be paid to directors for their services as directors. No remuneration shall be paid to a director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken. Directors and officers, however, may be reimbursed for any actual expenses incurred in connection with their duties as such officers or directors.

Section 6. 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 two such meetings (including an organizational meeting within ten days of election of directors) shall be held during each fiscal year. The meeting place shall ordinarily be within the Property, itself, unless, in the judgment of the Board, a larger meeting room is required than exists within the Property in which case the meeting room shall be located as close as reasonably possible to the Property. Notice of the time and place of the meeting shall be communicated to directors not less than four days prior to the meeting unless the time and place of the meeting is fixed by the Bylaws. Notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 7. Special Meetings. Special meetings of the Board of Directors may be called by the President on not less than seventy-two (72) hours' prior written notice signed by the President or oral notice by the President and given to each director, personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall also be called by the President in like manner and on like notice, upon the written request of at least two of the directors other than the President. Notice of a special meeting of the Board shall also be posted in the manner prescribed for notice of regular Board meetings. Notice of any such meeting need not be given to any director who signed a waiver of notice or a written consent to holding of the meeting. Special meetings of the Board shall ordinarily be held within the Property, itself, unless in the judgment of the Board, a larger room is required than exists within the Property in which case the meeting room shall be located as close as reasonably possible to the Property.

Section 8. Waiver of Notice. Before, at, or after any 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 deemed to be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

Section 9. 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. No business of the Board shall be transacted at any meeting of the Board unless a quorum is present. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board unless the

Articles, the Bylaws or the Declaration otherwise specifically requires the affirmative vote of a different number of directors on a specific matter. Unless otherwise prohibited by law or resolution of the Board of Directors, meetings of the Board, whether regular or special, may be held by means of a conference telephone call or similar communications equipment arrangement which allows all persons participating in the meeting to hear each other. Participation in any such meeting shall constitute presence in person at the meeting.

Section 10. 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 interests of the Association, provided that no meeting may be adjourned for a period longer than 30 days. In addition, the Board may, with the approval of a majority of a quorum of its members, adjourn a Board meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and orders of business of a similar nature. The nature of any and all business considered by the Board in executive session shall first be announced in open session.

Section 11. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining from the directors a unanimous written consent to resolutions specifying the action. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 12. Fidelity Bonds. The Board of Directors shall obtain fidelity bonds or insurance as required under the Declaration. The premiums for any fidelity bonds or insurance shall be paid by the Association.

Section 13. Committees. Subject to any rights of Developer to appoint members of the Design Review Committee, as may be set forth in the Declaration, the Board of Directors may by resolution appoint committees of the Board, which committees shall have the powers and authority designated in the resolution or resolutions establishing them.

ARTICLE IV

Officers

Section 1. Designation. The principal officers of the Association shall be a President, a Secretary, a Treasurer and, if deemed necessary by the Board of Directors, one or more Vice Presidents, all of whom shall be elected by the Board of Directors. The directors may appoint an Assistant Secretary and an Assistant Treasurer, and such other officers as in their judgment may be necessary. Any person holding the office of President must be a director. Persons holding offices other than that of President need not be directors. Any one person may hold two or more offices at the same time, except that no one person shall simultaneously hold the office of President and Secretary.

Section 2. Election of Officers. The officers of the Association shall be elected from time to time by the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected.

Section 4. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. The resignation of an officer shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of a resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by vote of a majority of the Board of Directors. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Members of the Association and of the Board of Directors. He shall have all of the general powers and duties that 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 of the Association from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association. The President shall also have such other powers as provided for in the Declaration.

Section 7. Vice President. The Vice President, if a Vice President is chosen (or the most senior Vice President, if there shall be more than one), shall take the place of the President and perform his duties whenever the President shall be absent, unable to act or refuses to act. If neither the President nor a Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. A Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 8. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members; 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 the Secretary.

Section 9. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate accounts 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.

Section 10. Compensation. No compensation shall be paid to officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Association in any other capacity, unless, before the services are undertaken, a resolution authorizing such remuneration shall have been unanimously adopted by the Board in accordance with the provisions of the Declaration, the Articles, these Bylaws and applicable law.

ARTICLE V

Design Review Committee

There shall be a Design Review Committee as provided for in the Declaration. The Design Review Committee shall be appointed in the manner provided for in the Declaration and shall have such duties and powers as provided for in the Declaration.

ARTICLE VI

Enforcement

Section 1. Power of Board. Subject to any restrictions under the Declaration, the Articles and applicable law, the Board shall have the power to impose reasonable fines, which shall constitute an Individual Charge, and to suspend an Owner's right to vote and an Owner's right to use the Common Areas for violation of the Declaration, the Articles, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to prevent ingress and egress to or from the Owner's Lot. The failure of the Board to enforce any provision of the Declaration, the Articles, these Bylaws, or any rule or regulation of the Association shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. Covenants Committee. The Board may delegate all or a portion of its authority pursuant to this Article VI to a committee which the Board may designate and name as it chooses (the "Covenants Committee").

Section 3. Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator and the Owner, if the violator is other than the Owner, with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than fifteen (15) days from the date of delivery of notice (the "Hearing Request Period") within which the alleged violator may present a written request to the Covenants Committee, if any, or Board for a hearing to present an oral and/or written opposition to imposition of the proposed sanction; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun during the Hearing Request Period. If a timely challenge is not made, the sanction stated in the notice shall be imposed not less than five (5) days after the expiration of the Hearing Request Period.

Section 4. Suspension of Owner's Rights. Notwithstanding the foregoing, the Board may adopt a rule automatically suspending the rights of an Owner to vote and an Owner's right to use the Common Areas for the period during which any Assessment or other charge owed to the Association by the Owner is delinquent.

Section 5. Hearing. If a hearing is requested within the Hearing Request Period, the hearing shall be held in a special meeting of the Covenants Committee or the Board, as specified in the notice, affording the alleged violator and the Owner, if the alleged violator is other than the Owner, a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Notice may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be by first-class or registered mail sent to the Person alleged to have committed the violation at the Lot and also the last known address of the Person shown on the Association's records. If the alleged violator is other than the Owner, notice must also be given to the Owner at the last address of the Owner shown on the Association's records. The proof of proper notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator and the Owner, if the alleged violator is other than the Owner, appear at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the Hearing Request Period. A suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Occupant or Owner.

Section 6. Appeal. In the event the initial hearing is held before the Covenants Committee, the alleged violator and the Owner, if the alleged violator is other than the Owner, shall have the right, following the hearing, to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association within thirty (30) days after the date a decision is issued by the Covenants Committee.

Section 7. Hearings Closed to Public. Hearings conducted by the Covenants Committee or the Board pursuant to this Article VI shall not be open to the public, except at the discretion of the Board and with the consent of the alleged violator and the Owner, if the alleged violator is other than the Owner.

Section 8. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Articles, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Person

and the Owner, if the violator is other than the Owner, responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees, actually incurred by the Association in the enforcement action.

ARTICLE VII

Miscellaneous

Section 1. Books and Accounts. Subject to the provisions of the Declaration, the Board, at all times, shall keep, or cause to be kept by the Treasurer, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Members and other Persons as specified in the Declaration, if any, at reasonable times, such books that shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. Notwithstanding anything to the contrary herein, the Association's records of account may be kept on a cash accounting basis if the Board so elects, subject to the requirements of applicable law. The Board shall also establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection.
- (b) Hours and days of the week when such an inspection may be made.
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Every director of the Association shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Section 2. Execution of Corporate 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 such one or more directors or officers of the Association as the Board shall designate.

Section 3. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

Section 4. Venue. The proper venue for any dispute arising in connection with these Bylaws shall be Yavapai County, Arizona.

Section 5. Notice. Any written notice to the Members, the Association or any committee thereof that is required or permitted under the Bylaws or the Declaration shall be

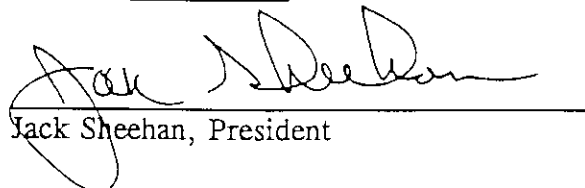
given in accordance with Section 18.1 of the Declaration. The address of the Association for purposes of such notice shall be its principal office, as set forth in Article I, Section 4 hereof.

ARTICLE VIII

Amendment of the Bylaws

Until the Transition Date, the Developer may amend these Bylaws in its sole and absolute discretion. After the Transition Date, these Bylaws may be amended at a regular or special meeting of the Members, by a vote of the Members having more than fifty percent (50%) of the votes entitled to be cast by the Members present in person or by proxy; provided that the Developer, so long as the Developer owns any Lot, and thereafter, the Board, without a vote of the Members, may amend the Bylaws in order to conform the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency. These Bylaws shall not be amended to contain any provisions that would be contrary to or inconsistent with the Declaration or the Articles, and any provision or purported amendment or modification to these Bylaws which is contrary to or inconsistent with the Declaration or the Articles shall be void to the extent of such inconsistency.

THE FOREGOING BYLAWS having been adopted by the Board of Directors of the Association by unanimous consent without a meeting on November 28, 1995, the undersigned, being the President (Chief Officer) and Secretary of the Association, have hereunto set our hands as of the 28 day of November, 1995.



Jack Sheehan, President



Susan Roberts, Secretary

