

**BY-LAWS
OF
SWEETWATER COMMUNITY
ASSOCIATION, INC.**

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**BY-LAWS
OF
SWEETWATER COMMUNITY ASSOCIATION, INC.**

Chapter 1

Name, Principal Office, and Definitions

1.1. Name

The name of the corporation is Sweetwater Community Association, Inc. (the "Association").

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain recorded Master Declaration of Covenants, Conditions and Restrictions for Sweetwater, as it may be amended (the "**Master Declaration**"). The term "**majority**," as used in these By-Laws, means those votes or Owners, as the context may indicate, totaling more than 50% of the total eligible number of votes of Owners.

1.2. Principal Office

The Association's principal office shall be located in Blaine County, Idaho. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3. Definitions

Chapter 2

Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership

The Association shall have two classes of membership, Owner Membership and Declarant Membership, as more fully set forth in the Master Declaration. Provisions of the Master Declaration pertaining to membership are incorporated by this reference. The person(s) appointed by the Declarant to serve in the Association and Board shall be referred to as the "Declarant Member(s)."

2.2. Place of Meetings

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Association Meetings

(a) *Annual Meetings.* The Board shall schedule regular annual meetings of the Members to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) *Special Meetings.* The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution.

2.4 Notice of Meetings

The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Master Declaration, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, at least 10 but not more than 50 days before the date of such meeting.

2.5. Waiver of Notice

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper

notice is raised before the business is put to a vote.

2.6. Adjournment of Meetings

If any Association meeting cannot be held because a quorum is not present, the Members representing a majority of the votes present at such meeting may adjourn the meeting to a time at least five but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Members of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

2.7. Voting

Members shall have such voting rights as are set forth in the Master Declaration, which provisions this reference specifically incorporates.

2.8. Proxies

Any Owner Member entitled personally to cast the vote for his/her Unit on any matter, may vote in person or by proxy, subject to the limitations of Idaho law and subject to any specific provision to the contrary in the Master Declaration or these By-Laws.

Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) the Secretary's receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person, or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.9. Quorum

Except as these By-Laws or the Master Declaration otherwise provide, the presence of Members, either in person or by proxy, representing a majority of the total votes in the Association shall constitute a quorum at all Association meetings.

2.10. Conduct of Meetings

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

2.11. Action Without a Meeting

Any action required or permitted by law to be taken at a meeting of the Members

may be taken without a meeting, without prior notice, and without a vote if a majority of Members entitled to vote on such matter sign a written consent specifically authorizing the proposed action. All such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Members at a meeting.

Chapter 3

Board of Directors: Selection, Meetings, Powers

A. Composition and Selection

3.1. Governing Body; Qualifications

The Board shall govern the Association's affairs. Each director shall have 1 vote. Except with respect to any director(s) appointed by the Declarant, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Sweetwater.

If an Owner is not an individual, any officer, director, partner, member, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than 1 such representative on the Board at a time except in the case of any director(s) the Declarant appoints.

3.2. Number of Directors

The Board shall consist of 3 to 7 directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office

(a) *Initial Board.* The initial Board shall consist of the 3 directors appointed by the Declarant who shall serve until their successors are appointed or elected as provided in this Section.

(b) *Directors During Declarant Control Period.* Except as otherwise provided in this subsection, the Declarant may appoint, remove, and replace Board members until termination of the Declarant Control Period. During the Declarant Control Period, the Owner Members shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owner Members are referred to as "Owner Directors"):

(i) Within 30 days after the time that Owners other than Declarant own 25% of the Units permitted by the PUD, or whenever the Declarant earlier determines, the President shall call for an election by which the Members shall be entitled to elect 1 of 3 initial directors, who shall be elected at large. The remaining 2 directors shall be appointees of the Declarant. The Owner Director elected by the Owners shall not be subject to removal by the Declarant and shall be elected for a term which expires on the date of the second annual meeting following his or her election. Upon expiration of such director's term, and thereafter upon the expiration of each successor's term, a successor shall be elected for a two-year term.

(ii) Within 30 days after the time that Owners other than Declarant own 50% of the Units permitted by the PUD or whenever the Declarant earlier determines, the Board shall be increased to 5 directors. The Owner Director elected by the Owners under paragraph (i) above shall continue

to serve, and the President shall call for an election by which the Members shall be entitled to elect a second of the 5 Directors. The Declarant shall appoint the remaining 3 directors. The Owner Director shall be elected for a term that expires on the date of the second annual meeting following his or her election. Upon the expiration of such director's term, and thereafter upon the expirations of each successor's term, a successor shall be elected for a two-year term.

(c) Directors After the Declarant Control Period.

(i) Within 90 days after termination of the Declarant Control Period, the Board shall be increased to 7 directors. The President shall call for an election by which the Members shall be entitled to elect directors to fill vacancies for a total of 6 Owner Directors. 3 directors shall be elected to serve until the second annual meeting following their election and 3 directors shall be elected to serve until the third annual meeting following their

election, as such directors determine among themselves.

(ii) So long as there is a Declarant, the Declarant shall be entitled to appoint, remove, and replace the 7th director. Thereafter, the director appointed by the Declarant shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of 2 years.

(iii) Upon expiration of the term of office of each Owner Director, the Members shall be entitled to elect a successor to serve a term of 2 years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board during and after the Declarant Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	25% of Anticipated Units Conveyed	25% of Anticipated Units Conveyed	90 Days After Termination of Declarant Control	Termination of Declarant Membership
Declarant	Owner	Owner	Owner	Owner
Declarant	Declarant	Owner	Owner	Owner
Declarant	Declarant	Declarant	Owner	Owner
		Declarant	Owner	Owner
		Declarant	Owner	Owner
			Owner	Owner
			Declarant	Owner

3.4. Nomination and Election Procedures

(a) *Nomination of Candidates.*

At least 30 days prior to any election of directors by the Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve a term of 1 year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Owner Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. In pursuing diversity in nominations, the Nominating Committee shall focus on finding and nominating candidates with varied backgrounds, interests in Sweetwater, and experiences. Nominations shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

(b) *Election Procedures.* At each election, voting may be by written ballot or may be accomplished via computer. Each Member may cast 1 vote for each position to be filled from

any slate of candidates on which such Owner Member is entitled to vote; however, under no circumstances shall cumulative voting be permitted in any election of Directors.

In the event of a tie vote on any slate, the Members entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) from such slate by the Owner Members. Such election shall be held by mail, with ballots to be sent by first class mail to each Owner Member within 10 days after the meeting at which the original election was held.

3.5. Removal of Directors and Vacancies

Members holding a majority of the votes entitled to be cast for the election of such director may remove any Owner Director with or without cause. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director the remaining members of the Board shall appoint a successor to fill the vacancy for the remainder of the term of such director.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or resides in a Unit owned by a member who is so delinquent) in the payment of any assessment or other charge due the

Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of any Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Owner Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors the Declarant appoints. The Declarant shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

B. Meetings

3.6. Organizational Meetings

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix.

3.7. Regular Meetings

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least 4 times during each fiscal year with at least 1 meeting per quarter.

3.8. Special Meetings

The Board shall hold special meetings when called by written notice which the President, Vice President, or any 2 directors sign(s).

3.9. Notice; Waiver of Notice

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least 10 business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least 72 hours before the time set for the meeting.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present; and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

3.11. Quorum of Board

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Idaho law, these By-Laws, or the Master Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

3.12. Conduct of Meetings

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall

ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

3.13. Open Meetings; Executive Session

(a) Subject to the provisions of subsection 3.13(b) and Section 3.14, all Board meetings shall be open to all members, but only directors may participate in any discussion or deliberation unless otherwise expressly authorized to do so by a vote of a majority of a quorum of the Board. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the foregoing, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, for consideration of one or more of the following topics:

- (i) employment or personnel matters for employees of the Board or Association;
- (ii) legal advice from an attorney for the Board or the Association;
- (iii) pending or contemplated litigation; and/or
- (iv) pending or contemplated matters relating to

enforcement of the Association's documents or rules.

3.14. Action Without a Formal Meeting

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all of the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Board shall post or otherwise provide notice of the Board's action in a prominent place within Sweetwater within three business days after obtaining all written consents to an action. Failure to give notice shall not render the action taken invalid.

C. Powers and Duties

3.15. Powers

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Idaho law require to be done and exercised exclusively by the membership generally.

3.16. Duties

The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Master Declaration, an annual

budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;

(b) levying and collecting assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community Wide Standard and in accordance with the Master Declaration;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;

(f) making and amending Rules in accordance with the Master Declaration;

(g) opening bank accounts on the Association's

behalf and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Master Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Master Declaration, paying the cost thereof and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping a detailed accounting of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements

of the Association as provided in Section 9.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Sweetwater; and

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Idaho law, the Articles, and these By-Laws; and

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Master Declaration;

3.17. Committees

(a) *General.* In addition to the Transition Committee appointed pursuant to Chapter 4, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(b) *Covenants Committee.* In addition to any other committees that the Board may establish pursuant to Section 3.17(a), the Board may appoint a Covenants Committee consisting of at least 3 and no more than 7 Owners who

shall not be officers, directors, or employees of the Association, or the spouse, parent, sibling, or child of any officer, director, or employee. Acting in accordance with the provisions of the Master Declaration, these By-Laws, and resolutions the Board may adopt, the

Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

Chapter 4

Transition from Declarant Control to Owner Member Control of Sweetwater

4.1. Purpose

The time during which Owners assume control and responsibility of the Association is known as the "Transition Period." The Transition Period is a process whereby control of the Board gradually shifts from the Declarant to Owners and the Owners carry out the responsibilities and functions of the Association as set forth in the Master Declaration and these By-Laws. During this process, the Owners, drawing from their experience, education, and training in governance, begin to perform the duties of the Board which are outlined in these By-Laws, without the assistance of the Declarant or the Declarant appointed directors.

This Chapter is intended to guide the Declarant, Owners, and the Board through the transition process; prepare Owners to take control of the Board; encourage direct dialogue among all parties to anticipate and resolve maintenance and operation issues; and promote community-wide participation and understanding of the transition process.

4.2. Transition Committee

The Board shall appoint a 3 to 5 member "Transition Committee" as soon as possible prior to the termination of the Declarant Control Period. The Transition Committee shall be comprised of a majority of Owner representatives, who shall be selected from the existing Voting Delegates at the time the Transition Committee is

appointed, and, at a minimum, 1 Declarant representative. Unless the Transition Committee determines it is not necessary, within 3 months from the date of its formation, the Transition Committee shall recommend a transition agreement to the Board.

(a) *Transition Agreement.* The Transition Committee shall include in the transition agreement (i) a 5 financial plan, or alternatively, a 1 year financial plan with 5 year rollover projections, an evaluation of the physical portions of Sweetwater, and a recommendation of which areas are in need of service, repair, or replacement; (ii) an agreement as to which parties are responsible for rendering such service, repair, or replacement and a time line for completing such activities; (iii) a list of all existing contracts and an agreement as to which contracts will be continued; (iv) an agreement as to future Declarant rights and obligations, if any; and (v) any other issue affecting the operation of the Association or the maintenance of Sweetwater.

The Transition Committee shall work in good faith to develop a transition agreement for execution by the Declarant and the Association. Once agreed upon by a majority of Transition Committee members, the transition agreement shall be recommended to the Board for its approval and execution. In the event that a transition agreement is not reached, the Transition Committee shall inform the Board in writing the reasons why it was unable to finalize a transition agreement.

The following suggestions are listed to guide the Transition Committee in developing a transition agreement:

(i) Inspect all physical structures, recreational areas, and improvements in the Area of Common Responsibility to evaluate their condition and prepare or update the capital improvement plan;

(ii) Place all Common Area utility services (electric, water, gas, telephone, cable, internet/intranet) in the Association's name;

(iii) Update the Association's corporate book, record books, and accounts. A record of all receipts, payments, and expenditures made on the Association's behalf must be maintained;

(iv) Evaluate the Association's Governing Documents to ensure that the Association has the necessary power, authority, and infrastructure to operate Sweetwater;

(v) Conclude any pending legal, document, or Association matters, such as deeding any remaining Common Area to the Association, addressing all covenant enforcement issues, and taking any assessment collection action;

(vi) Review insurance policies to ensure adequate coverage is being maintained;

(vii) Review property management agreements to develop recommendations on post-developer management of the Common Area and facilities;

(viii) Conduct a financial review of the Association's current budget, assessment rate, reserve accounts, and tax filings and records; and

(ix) Review the Association's real and personal property interests, deeds, and warranties.

(b) Transition Period Education and Training Opportunities. During the Transition Period, the Transition Committee's vision of transition and strategy for developing a transition agreement should be explained to Owners and the Owners should be prepared to assume control of the Association. Both objectives may be accomplished by teaching Owners about what transition of control means, what to expect during and after the Transition Period, and how to participate in the process.

During the Transition Period, the Transition Committee may provide or provide for education and training opportunities for Owners, focused on the subject of transition. Education or training opportunities may be held prior to the election during which the Owners elect the entire Board. Additionally, the Board may conduct training for the Transition Committee to assist the Transition Committee in accomplishing its tasks. The Board may retain, as a Common Expense, industry professionals which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose.

(c) Transition Period Notices. Once formed, the Transition Committee

shall keep the Declarant and the Owners informed of the transition process, including the Transition Committee's agenda, a timeline for creating a

transition agreement, and a schedule of transition education and training opportunities.

Chapter 5

Officers

5.1. Officers

The Association's Officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not, be Board members. The Board may appoint such other officers, including 1 or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any 2 or more offices may be held by the same person, except the offices of President and Secretary.

5.2. Election and Term of Office

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

5.3. Removal and Vacancies

The Board may remove any officer whenever, in its judgment, the Association's best interests will be served, and may fill any vacancy in any

office arising because of death, resignation, removal or otherwise, for the unexpired portion of the term.

5.4. Powers and Duties

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Master Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

5.5. Resignation

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

Chapter 6
Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Idaho law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, others prepare or present to the extent authorized under Idaho law.

6.2. Liability

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

(b) A director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the express or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be members).

6.3. Indemnification

Subject to the limitations of Idaho law, the Association shall indemnify, hold harmless, and defend every officer, director, and committee member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Utah law: or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

- (i) appropriation, in violation of his or her duties, of any business opportunity of the Association;
- (ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors, or officers; or

(iv) receipt of an improper personal benefit

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Conflicts of Interest; Code of Ethics

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within 2 years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors the Declarant appoints may be employed by or otherwise transact business with the Declarant or its affiliate, and the Declarant may transact business with the Association or its contractors.

6.5. Advancement of Expenses

In accordance with the procedures and subject to the conditions and limitations set forth in Idaho law, the Board may authorize the Association to advance funds to pay for or reimburse the

reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by of being or having been an officer, director, or committee member of the Association.

Chapter 7

Management and Accounting

7.1. Compensation of Directors and Officers

The Association shall not compensate directors and officers for acting as such unless Members representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, however, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

7.2. Right of Declarant to Disapprove Actions

So long as there is a Declarant, the Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the Declarant's sole judgment, would tend to impair rights of the Declarant under the Master Declaration or these By-Laws, interfere *with* development or construction of any portion of Sweetwater, or diminish the level of services the Association provides.

(a) *Notice.* The Association shall give the Declarant written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) *Opportunity to be Heard.* At any such meeting, the Association shall give the Declarant the opportunity to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy) or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Declarant, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer, or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 business days following the meeting at which such action was proposed or, in

the case of any action taken by written consent in lieu of a meeting, at any time within ten business days following receipt of written notice of the proposed action.

The Declarant may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Declarant shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or, any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent

The Board shall employ the Community operations Manager as the Association's professional management agent at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. The Board may employ the Declarant or a Declarant affiliate as managing agent or manager.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of the managing agent or manager which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such

contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

7.4. Accounts and Reports

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

- (i) accounting and controls should conform to generally accepted accounting principles; and
- (ii) the Association's cash accounts shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed; financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipt and

disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and,

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution).

(c) An annual report consisting of at least the following shall be made available for members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

7.5. Borrowing

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain approval in the same manner provided in the Master Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

7.6. Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, and other owners or residents, within and outside Sweetwater. The Board must consent to any common management agreement.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

After the Declarant Control Period, all Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least 2 officers or by such other person or persons as the Board may designate by resolution.

Chapter 8

Enforcement Procedures

The Association shall have the power, as provided in the Master Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Master Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation; (b) the proposed sanction to be imposed; (c) the alleged violator shall have 10 days to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Chapter 3; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 10 days of the notice. The alleged violator shall respond to the notice of the alleged violation in writing within such 10 day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10 day period, the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Chapter, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof 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 requirements shall be deemed satisfied if

the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing

If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the facts as presented at the hearing and the Board's or Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; however, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to

the Board, pursuant to such procedures as the Board shall adopt. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or

Secretary within 10 days after the hearing before the Covenants Committee.

Chapter 9
Miscellaneous

9.1. Fiscal Year

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

9.3. Conflicts

If there are conflicts among the provisions of Idaho Law, the Articles of Incorporation, the Master Declaration, and these By-Laws, the provisions of Idaho law, the Master Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records

(a) *Inspection by Members and Mortgagees.* The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such

other place within Sweetwater as the Board shall designate.

(b) *Rules for Inspection.* The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing the documents requested.

(c) *Inspection by Directors.* Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices

(a) *Form of Notice and Method of Delivery.* Except as otherwise provided or authorized in the Master Declaration or these By-Laws or by Law, all notices, demands, bills, statements, or other communications under the Master Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic

mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member: at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either: at the address; facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the members pursuant to this Section; or

(iii) if to the Declarant: at the Declarant's principal address as it appears on the Idaho Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective at the earliest date following:

(i) when received;

(ii) if sent by United States mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prep aid;

(iii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iv) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment

(a) By Declarant. Prior to termination of the Declarant Control Period, the Declarant may unilaterally amend these By-Laws. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total votes in the Association, and the consent of the Declarant, if such exists. In addition, the approval requirements set forth in

Chapter 16 of the Master Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) *Validity and Effective Date of Amendment*, Amendments to these By-Laws shall become effective upon their approval in the manner set forth above, unless a later effective date is

specified therein. Any procedural challenge to an amendment must be made within 6 months of approval, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any of the Declarant's rights or privileges without the written consent of the Declarant or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Sweetwater Community Association, Inc., an Idaho corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 200__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this day of _____, 200__.

Secretary