

BYLAWS  
OF  
WINDJAMMER HOMEOWNER'S ASSOCIATION  
(Not for Profit)

These Bylaws have been adopted by the Board of Directors of Windjammer Homeowner's Association (the "Association"), a corporation organized under the Colorado Nonprofit Corporation Act (Articles 20 to 29, Title 7, Colorado Revised Statutes, 1973).

ARTICLE I

Members

Section 1.1 Eligibility. Each Owner of a Lot in Windjammer shall, by virtue of his ownership of a Lot, be a Class A Member of the Association with one vote for each Lot owned. When there is more than one Owner of a Lot, they shall determine which of them is to act as Member and exercise the privileges of Membership for that Lot. The Briargate Joint Venture shall be a Class B Member of the Association as provided in the Articles of Incorporation of the Association, unless it sooner surrenders its Class B Membership. For as long as it retains its Class B Membership, The Briargate Joint Venture shall have three votes for each Lot owned by it.

Section 1.2 Proxies. Each Owner may vote in person or by written proxy executed by the Member or his duly authorized attorney-in-fact. No proxy shall be valid after the expiration of 11 months from the date of its execution unless otherwise provided in the proxy.

Section 1.3 Quorum. Holders of at least 25% of the votes vested in each class of Members shall constitute a quorum. If a quorum is present in person or by proxy, a majority of the votes entitled to be cast by the Members present or represented by proxy shall be the act of the Members, except as otherwise provided by the Articles of Incorporation, Declaration or these Bylaws.

ARTICLE II

Meetings of Members

Section 2.1 Annual Meeting. The annual meeting of the Members shall be held on December 1 of each year, beginning with 1982, for election of directors and for the transaction of such other business as may come before the meeting. If December 1 is a legal holiday, the meeting shall be held on the next succeeding business day.

Section 2.2 Special Meetings. Special meetings of the Members may be called by the president or by the Board of Directors or by Members having at least one-fourth or more of the total number of votes vested in the Class A Members of the Association.

Section 2.3 Place and Hour of Meetings. Members' meetings shall be held at 4:30 o'clock p.m. or such other time designated by the Board at Declarant's offices, or other location designated by the Board within five miles of Windjammer. .

Section 2.4 Notice of Meetings. Written notice of any meeting of the Members, stating the place, date and hour of the meeting, and the purposes for which the meeting is called, shall be delivered personally or by mail to each Member not less than 15 nor more than 50 days before the date of the meeting.

ARTICLE III

Directors

Section 3.1 Number of Directors. The number of directors of the corporation shall be not less than five nor more than nine, with the exact number to be determined by resolution of the Board of Directors. Directors shall be elected at the annual meeting of the Members, and shall, except for the initial directors, serve for a term of three years from the date of the annual meeting of the members at which they were elected. Election and removal of directors shall be by a majority vote, or such extra majority as may be required by statute or by these Bylaws. Two of the initial directors will serve a term of one year, two

will serve for two years, and the remaining initial directors will serve for three years.

Section 3.2 Holding Over. A director shall continue in office after the expiration of his term until his removal or until his successor is elected.

Section 3.3 Meetings of the Board of Directors. A regular annual meeting of the Board of Directors shall be held without call or notice immediately following the annual meeting of the Members and at the same place. Special meetings of the Board of Directors may be held at any place agreeable to the directors. Special meetings may be called by the President, or by any two directors. At least three calendar days' prior notice of the time and place of a special meeting shall be given to each director by telephone or telegraph or by leaving notice with him or at his residence. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the directors shall be required.

Section 3.4 Quorum. A majority of the directors constitutes a quorum. If there is a quorum, the act of the majority of the directors present at the meeting shall be the act of the directors.

Section 3.5 Powers of the Board. The Board of Directors shall manage and exercise general supervision over the affairs of the Association.

Section 3.6 Personnel, Manager and Managing Agent. The Board of Directors may designate and remove personnel necessary for the operation, maintenance, repair and replacement of the Maintenance Area. The Board of Directors may engage the services of a manager or a managing agent or both and may delegate to the manager or the managing agent any or all of the powers and duties granted to the Board of Directors except the Board's responsibilities to exercise a general supervision over the affairs of the Association.

Section 3.7 Method of Adopting Rules and Regulations. The Board of Directors may by resolution establish and amend administrative rules and regulations governing the operation and use of the Maintenance Area, which rules, regulations and amendments shall be effective upon delivery of a copy to each Owner of the Lots in Windjammer.

Section 3.8 Penalties for Infractions. The rules and regulations established by the Board of Directors may provide for the suspension of rights of Membership, while assessments remain delinquent or while Members or residents are in violation of the Declaration for Windjammer, these Bylaws or the Association's rules or regulations. However, such a suspension shall not exceed a period of 60 days.

Section 3.9 Executive Committee. The Executive Committee of the Board of Directors shall consist of two or more directors who shall be those directors who are the officers of the Association, unless the Board designates other directors. During the intervals between meetings of the Board of Directors, the Executive Committee shall have and may exercise all of the authority of the Board of Directors in the management of the Association. The Executive Committee shall keep minutes and shall submit the minutes to the next meeting of the Board of Directors for approval. Failure to submit or lack of approval shall not invalidate action taken by the Association upon authorization of the Executive Committee before the time when the action was submitted to the Board and approval denied. The Executive Committee shall establish its own rules for notice and holding of meetings. A majority of the Executive Committee shall constitute a quorum.

Section 3.10 Duties of Directors. It shall be the duty of the Board of Directors to:

- (a) cause the Maintenance Area to be maintained as provided in the Declaration;
- (b) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth of the Class A Members who are entitled to vote;
- (c) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (d) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Lot at least 30 days in advance of each Annual assessment period;.
  - (2) send written notice of each assessment to every Owner subject thereto at least 30 days in advance of each annual assessment period; and,

(3) foreclose the lien against any property for which assessments are not paid within 30 days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(e) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(f) procure and maintain adequate liability and hazard insurance on property owned by the Association; and

(g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

## ARTICLE IV

### Officers'

Section 4.1 The Officers. The officers of the Association shall be a President, Vice President and a Secretary/Treasurer, all of whom shall be elected from the Board of Directors. The Board may also appoint an assistant to the Secretary/Treasurer.

Section 4.2 President. The President shall preside over meetings of the Board of Directors and of the Members. The President shall have general supervision over the officers, employees and agents of the Association. He is empowered to sign deeds, conveyances and reports. He shall perform all other acts incident to the office of President or that may be required of him by any Bylaw or by the Board of Directors. He may delegate and subdelegate his management functions as from time to time to him seems appropriate.

Section 4.3 Vice President. The Vice President shall have the power and may perform the duties of the President in his absence or disability, shall assist the president and shall perform such other duties as may be prescribed from time to time by the Board of Directors.

Section 4.4 Secretary and Treasurer. The offices of Secretary and of Treasurer shall be held by the same person who shall perform the duties of both and may style himself Secretary, Treasurer or Secretary/Treasurer. He may not hold the office of President or Vice President. The Secretary shall keep the minutes of meetings of the Board of Directors and of the Members, shall be custodian of the corporate seal, shall attest the corporate seal and shall perform all duties incident to the office of Secretary and as prescribed by the Board of Directors. The Treasurer shall keep the financial records and books of account and may act through such delegates as he selects, including but not limited to, any manager or managing agent designated by the Board of Directors. The Assistant Secretary/Treasurer shall assist the Secretary/Treasurer as directed.

Section 4.5 Election. The Board of Directors shall elect the officers at the regular annual meeting of the Board or at a special meeting if the regular annual meeting is omitted. The Board of Directors may remove an officer and may fill a vacancy caused by the resignation or removal of an officer.

Section 4.6 Holding Over. An officer shall continue in office after the expiration of his term until his successor is elected or until his removal.

## ARTICLE V

### Action by Members, Directors or Officers

Section 5.1 Action Without a Meeting. Any action which may be taken at a meeting of the Members or the directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the Members or of the directors entitled to vote with respect to the subject matter of the action.

Section 5.2 Waiver of Notice. A waiver of notice in writing signed by the person entitled to the notice whether before or after the time stated in the notice shall be equivalent to the giving of the notice. Attendance at a meeting shall constitute waiver of notice unless solely for the express purpose of objecting to the transaction of business because the meeting is not properly called or convened.

Section 5.3 Resignation. A director or an officer may resign his office by written resignation, which shall become effective without acceptance upon delivery to any officer of the Association.

## ARTICLE VI

### Records and Accounts

Section 6.1 Receipts and Expenditures. The Board of Directors or its delegate shall keep detailed, accurate records of receipts and expenditures affecting the Maintenance Area and the exterior maintenance and other operations of the Association.

Section 6.2 Inspection of Records of Receipts and Expenditures. Members and those mortgagees who have filed with the Association notice of their interest may inspect at convenient weekly business hours the records of receipts and expenditures described in Section 6.1.

Section 6.3 Statement of Accounts. Upon payment of a reasonable fee sufficient to compensate for the work involved and on 10 days' notice to the Board of Directors or its delegate, an Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

Section 6.4 Other Accounts and Records. The Association shall keep a record of the names and addresses of the Members entitled to vote and shall keep complete books and records of all accounts and minutes of the proceedings of its Members, Board of Directors and Executive Committee and all annual and special assessments, all of which may be inspected by any Member at any reasonable time.

Section 6.5 Mortgagees. The Association shall maintain a record of each mortgagee of any Lot who has filed with the Association a notice of its lien including the name and address of the mortgagee and conformed copies of the note evidencing the mortgage indebtedness and of the instrument constituting the mortgage security.

Section 6.6 Annual Financial Statement. The Association shall provide each Member annually a financial statement in reasonable detail of the Association's receipts and disbursements since the last statement, and its cash, bank accounts and indebtedness as of the date of the statement.

## ARTICLE VII

### Association Activities

Section 7.1 Services. The Association will, either itself or through a manager, managing agent, employees or contractors, provide for maintenance, repair, replacement and improvement of the Maintenance Area. The Association may also procure hazard and other insurance as provided in the Declaration and will, if such additional services are approved as required by the Declaration, provide landscaping, trash and snow removal and similar or dissimilar services and perform other functions.

Section 7.2 Income Tax Election. The Board of Directors, on behalf of the Association, may elect to have Section 528 of the Internal Revenue Code apply for each taxable year of the Association and in connection therewith, if the election is made, shall see to it that:

(a) at least 60% of the gross income of the Association for each taxable year consists solely of amounts received as membership dues, fees or assessments from Owners or residences or residential lots; and,

(b) at least 90% of the expenditures of the Association for each taxable year are expenditures for the acquisition, construction, management, maintenance and care of the Common Property.

Section 7.3 Limitation on Expenses. Except for restoration and replacement required by the Declaration in case of damage or destruction to the Maintenance Area, no project which will increase the annual budget by an amount which requires the vote of the Members pursuant to the Declaration shall be undertaken without prior approval of the Board of Directors and Members as required by the Declaration.

Section 7.4 Source of Funds. The Association shall obtain the funds required for its activities by assessments against the Lots and their Owners, as provided by the Declaration.

Section 7.5 Additions. The Association shall not provide any major recreational facilities and shall not undertake any additions to the Maintenance Area (other than as permitted by the Declaration) unless expressly authorized by the vote of a majority of each class of Members.

## ARTICLE VIII

### Budget and Assessments

Section 8.1 Preparation of Budget. At least one month before the annual meeting of the Members, the Board of Directors or the officers shall prepare and mail to each Member a proposed budget of anticipated financial requirements, expenses and other expenditures of the Association for the coming calendar year and the annual assessments proposed to be made with respect to each Lot. The amounts of the various items of expenditure shall be estimated from the costs already incurred by the Association and those incurred by Declarant in Windjammer and in comparable projects and from available information and forecasts of future costs and needs.

Section 8.2 Adoption of Budget; Assessments. At the organization meeting and at the first meeting of the directors following the regular date for the Members' annual meeting, the Board of Directors shall adopt a budget and, within the limit set by the Declaration, shall fix the amount of the annual assessments for the coming year for each Lot and its Owner. Annual assessments shall be payable in advance monthly or at other intervals as set by the Board. The Board may adjust the annual assessment as it deems advisable from time to time.

Section 8.3 Special and Emergency Assessments. The Board shall levy special assessments so as to charge the respective Owners for maintenance work on Maintenance Areas adjacent to their Lots necessitated by the Owner's negligence or neglect. Subject to the restrictions in the Declaration, the Board may also levy emergency assessments during the Association's fiscal year if regular annual assessment is inadequate and the Board deems an emergency assessment advisable to meet increased costs, to provide the maintenance and other work or outlays required of the Association or to remove or prevent a deficit. Emergency assessments shall require the affirmative vote of two-thirds of the Members of each class of the Association. Special and emergency assessments shall be payable in advance in one sum or in installments as the Board determines but not sooner than 30 days after the first billing.

Section 8.4 Apportionment of Assessments to the Owners and Lots. Expenditures and financial requirements shall be prorated and assessed equally among all Lots and their Owners except as provided in the Declaration, or except as the Board of Directors may reasonably determine that, because of special or unequal costs or benefits caused by actions or neglect of specific Owners, another basis is more equitable for special or emergency assessments.

Section 8.5 Billing. The Association will cause each Member to be sent a statement of his assessment.

## ARTICLE IX

### Protective Covenants

The Association is one party having the right of enforcement of the protective covenants and other provisions of the Declaration. The Association's expenses of such enforcement are a proper item for annual or special assessments.

## ARTICLE X

### Protection and Restriction of Officers and Directors

Section 10.1 Indemnity. The Association shall indemnify any director or officer against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty. The Association may also reimburse any director or officer for the reasonable costs of settlement of any such action, suit or proceeding, if it shall be found by a majority of the directors not involved in the controversy (whether or not a quorum) that it was in the best interest of the Association that such settlement be made and that such director or officer was not guilty of gross negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any rights to which such director or officer may be entitled under any Bylaw, agreement, vote of Members or otherwise.

Section 10.2 Conflicts of Interest. An officer or director may act for the Association although he is-associated with or interested in another party which is involved in the transaction provided, however, that he has disclosed that interest to the Association and no other officer or director has made known any objection. Contracts and other transactions of the Association with The Briargate Development Group shall be valid for all purposes although all or some of the officers or directors acting

for the Association are also officers, directors or other agents of The Briargate Development Group or are also acting for The Briargate Development Group.

Section 10.3 Loans. The Association shall not make any loan to any of its directors or officers.

Section 10.4 Compensation. The Association shall not pay any compensation to the officers or the directors for their services as such.

ARTICLE XI

Fiscal Year

The Association's fiscal year shall be the calendar year, beginning on January 1 and ending on the following December 31, except that the first fiscal year will begin on the date of incorporation.

ARTICLE XII

Corporate Seal

The Association shall have a corporate seal which shall be circular in form and shall contain the name of the corporation, the year of its organization and the words "Corporate Seal" and "Colorado".

ARTICLE XIII

Definitions

Capitalized terms in these Bylaws have the same meanings as in the Declaration.

ARTICLE XIV

Amendment; Conflicts

Section 14.1 Amendment. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of 75% of a quorum of each class of Members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership:

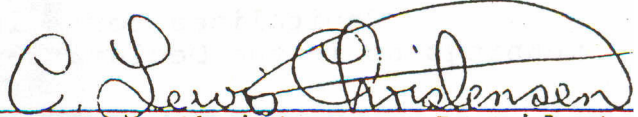
Section 14.2 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

APPROVED:

  
C. Lewis Christensen, President

President - Board of Directors

I, C. Lewis Christensen, as President of Windjammer Homeowner's Association, hereby certify that the attached document is a true and correct copy of the Bylaws of Windjammer Homeowner's Association adopted by the Board of Directors of Windjammer Homeowner's Association on July 30<sup>th</sup>, 1982.

  
C. Lewis Christensen, President

AMENDMENT TO BYLAWS

OF

WINDJAMMER HOMEOWNER'S ASSOCIATION

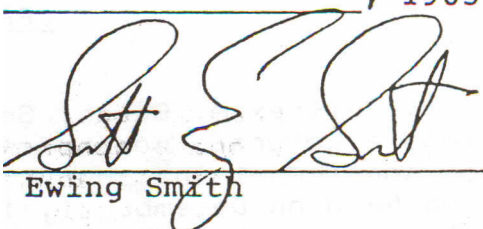
Section 3.1 Number, Tenure and Qualifications. The number of directors of the Association shall be not less than five nor more than nine, with the exact number "to be determined by resolution of the Board of Directors. Classification of the directors shall be made by dividing them into three classes, each class to be as nearly equal in number as possible. The first class shall initially consist of two of the existing directors of the Association, C. Lewis Christensen and Rebecca A. Rhodes, and the term of office of the directors of the first class shall expire at the 1984 annual meeting of the Members; the second class shall initially consist of one of the existing directors of the Association, Scott Ewing Smith, and the term of office of the director of the second class shall expire at the second annual meeting thereafter; and the third class shall initially consist of the four directors elected at the June 21, 1984 Special Meeting, or any adjournment thereof, and the term of office of the directors of the third class shall expire at the third annual meeting thereafter. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected and qualified to serve for a term of three years from the date of the annual meeting of Members at which they were elected, or until their earlier death, resignation or removal. Except as otherwise required by the laws of Colorado, election and removal of directors shall be by a majority vote of the Members entitled to vote, represented in person or by proxy. Directors must be at least eighteen years old and must be Members of the Association. A director shall continue in office after the expiration of his term until his removal or until his successor is elected.

Section 3.2 Holding Over and Vacancies. Any director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring in the board of directors may be filled by a majority of the remaining directors though less than a quorum, or by the affirmative vote of two directors if there are only two directors remaining, or by a sole remaining director, or by the Members if there are no directors remaining, or by an election at a meeting of Members called for that purpose. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by the affirmative vote of a majority of the directors then in office or by an election at a meeting of Members called for that purpose, and a director so chosen shall hold office until the next election of the class for which such director was chosen and thereafter until his or her successor shall have been elected and qualified, or until his or her earlier death, resignation or removal.

CERTIFICATE

I, Scott Ewing Smith, Secretary of Windjammer Homeowner's Association, a Colorado nonprofit corporation, certify that by Resolution adopted at a special meeting of the Members of the corporation held on June 21, 1984, at 7730 North Union Boulevard, Colorado Springs, Colorado, pursuant to a call by the President and at which a quorum was present, Sections 3.1 and 3.2 of the Bylaws of the corporation were amended to read as set out above.

Dated this 16th day- of November, 1984.

\_\_\_\_\_, 1985.  
  
Ewing Smith

Scott Ewing Smith, Secretary



AMENDMENT TO BYLAWS

OF

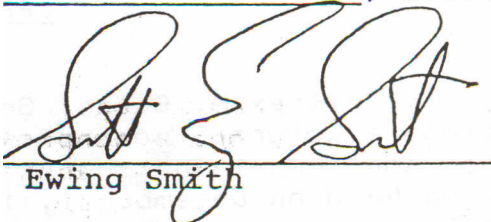
WINDJAMMER HOMEOWNER' S ASSOCIATION

Section 2.1 Annual Meeting. An annual meeting of the Members shall be held on the first Tuesday in the month of December in each year, or on such other date as may be determined by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting is a legal holiday, the meeting shall be held on the next succeeding business day.

CERTIFICATE

I, Scott Ewing Smith, Secretary of Windjammer Homeowner's Association, a Colorado nonprofit corporation, certify that by Resolution adopted at the annual meeting of the Members of the corporation held on January 16, 1985, at 7730 North Union Boulevard, Colorado Springs, Colorado, pursuant to a call by the President and at which a quorum was present, Section 2.1 of the Bylaws of the corporation was amended to read as set out above.

Dated this 25<sup>th</sup> day of April, 1985.

\_\_\_\_\_, 1985.  
  
Ewing Smith

Scott Ewing Smith

AMENDMENT TO BYLAWS

OF

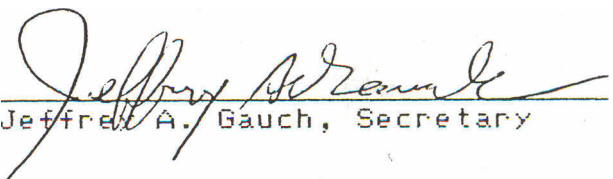
WINDJAMMER HOMEOWNERS ASSOCIATION

Section 3.1 (Amended) Number, Tenure and Qualifications. The number of directors of the Association shall be not less than five nor more than nine, with the exact number to be determined by resolution of the Board of Directors. In order to reestablish the classification of directors so that their terms of office expire at one year intervals, the placement of directors elected at the 1987 Annual Meeting shall be determined by the number- of votes they receive. The three directors with the highest number of votes shall serve terms of three years, expiring at the 1990 Annual Meeting. The three directors with a lower number of votes shall serve terms of two years, expiring at the 1989 Annual Meeting. The terms of the three directors currently serving shall expire at the 1988 Annual Meeting. At each annual meeting hereafter, a number of directors equal to the number of directors whose terms expire at the time of such meeting shall be elected and qualified to serve for a term of three years from the date of the Annual Meeting of Members at which they were elected, or until their earlier death, resignation or removal. Except as otherwise required by the laws of the State of Colorado, election and removal of directors shall be by a majority vote of the Members entitled to vote represented in person or by proxy. Directors must be at least eighteen years old and must be Members of the Association. A director shall continue in office after the expiration of his term until his removal or until his successor is elected.

CERTIFICATE

I, Jeffrey A. Gauch, Secretary of Windjammer Homeowner's Association, a Colorado nonprofit corporation, certify that by Resolution adopted at the annual meeting of the Members of the corporation held on December 1, 1987, at 7730 North Union Boulevard, Colorado Springs, Colorado, pursuant to a call by the President and at which a quorum was present, Section 3.1 of the Bylaws of the corporation was amended to read as set out above.

Dated this 20<sup>th</sup> day of December, 1987.

  
Jeffrey A. Gauch, Secretary