

 **2147429**
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Shelley Vance-Gallatin Co MT MISC 102.00

BYLAWS
of and for
WALTON HOMESTEAD
APARTMENT OWNERS ASSOCIATION

April 9, 2004



BYLAWS

of and for

WALTON HOMESTEAD APARTMENT OWNERS ASSOCIATION

The undersigned adopt the following Bylaws:

ARTICLE I

NAME

The following shall prevail throughout these Bylaws in the interpretation thereof unless specific provisions direct otherwise:

Walton Homestead Apartment Owners Association (WHAOA), is the incorporated organization authorized and empowered by the Declaration of Covenants, Conditions and Restrictions of and for Walton Homestead Subdivision PUD (Covenants) recorded as Document No. 2147427 in the records of Gallatin County, Montana, which is to be governed by, and which is empowered to act in accordance with the Covenants, these Bylaws and Montana law. Hereinafter said corporation shall be referred to as the "Association".

ARTICLE II

ADDRESS

The address of the initial principal office of the Association shall be 2066 Stadium Drive, Suite 202B, Bozeman, Montana 59715.

ARTICLE III

INCORPORATION AND POWERS

The Association shall be incorporated as a not profit mutual benefit corporation under the laws of the State of Montana. The Association shall have all the powers of a nonprofit mutual benefit corporation enumerated and set forth in Title 35, Chapter 2, Mont. Code Ann. The purposes of the Association are those set forth in the Articles of Incorporation and the Covenants.

ARTICLE IV

MEMBERSHIP INTEREST

Every person, group of persons, partnership, corporation or association who is a record Owner of a Unit within the boundaries of the apartment area in Walton Homestead Subdivision, PUD, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana, shall be a member of the WHAOA. The record Owners of Units shall be entitled to one membership interest for each Unit on a Lot. A record Owner is one who has an ownership interest in a Unit or Units as shown on the records of the Clerk and Recorder of Gallatin County, Montana including a fee simple title and a Buyer's



interest pursuant to a Contract for Deed. A record Owner shall not include mortgagees, beneficiaries of Trust Indentures, lienholders, leasehold interests or Contract for Deed sellers unless title is acquired by foreclosure or other legal means. A vacant Lot without a building shall be entitled to one membership interest until a building is constructed on the Lot and an Occupancy Permit is issued by the City of Bozeman. Once the building is completed and the permit issued, the number of membership interests shall be adjusted to one membership interest per Unit in the building. Example: The Owner of an apartment building with building with eight (8) Units shall be entitled to eight (8) votes; the Owner of a vacant Lot shall be entitled to one (1) vote.

Multiple Owners of a Unit shall have, collectively, one such membership interest. If more than one Unit is owned, the Owner or Owners thereof would have one membership interest for each separate Unit.

Membership interest shall run with the land so that said interest is an incident to ownership beginning when ownership rights are acquired and recorded and terminating when such rights are divested and the conveyance is recorded. Accordingly, no member shall be expelled, nor shall he be permitted to withdraw or resign while possessing a membership interest. Recorded shall mean filed for record with the Clerk and Recorder of Gallatin County, Montana.

Each Unit Owner shall be obligated to comply with the Bylaws, the Covenants and the laws, regulations and ordinances of the County of Gallatin and State of Montana. Such obligations shall include, but not be limited to, the paying of assessments to the Association. Failure of any Owner to abide by these Bylaws, Covenants and all rules made pursuant thereto, and the laws and ordinances of the County of Gallatin and State of Montana, shall be grounds for appropriate legal action by the Association against such noncomplying Owner.

ARTICLE V
MEETINGS AND VOTING

A. Annual Meetings:

There shall be an annual meeting of the Association during each year at such date, time and place as shall be set by a majority of the Board of Directors and as set forth in the Notice of the meeting, commencing the year after the final plat for the Walton Homestead Subdivision is filed with the Clerk and Recorder of Gallatin County, Montana and as set by the Board of Directors by Notice as herein provided. The agenda for the annual meeting shall include setting the number of Directors, election of Directors, review of the income and expenses of the last fiscal year, review of the annual budget and such other items as shall be set forth on the agenda. The agenda for the annual meeting shall be prepared by the Board of Directors and delivered to each Unit Owner along with the Notice.

B. Special Meetings:

Pursuant to these Bylaws, the Association may, at any time, hold special meetings, notice of which shall be sent to all Unit Owners in the manner hereinafter provided. Such meetings



may be called on the initiative of the Chairman of the Board of Directors or by a majority of the Board of Directors of the Association or by a petition signed by twenty-five percent (25%) of the Owners based on one vote per Unit.

C. Matters to be Raised at Special Meetings:

Only matters set forth in the Notice for a special meeting may be voted on at such special meeting.

D. Notices:

Notice of all meetings, annual or special, shall be mailed or personally delivered by the Association to every Unit Owner of record at the Owner's last known address at least ten (10) days but not more than fifty (50) days prior to the time for holding such meeting. Such Notices shall specify the date, time, place and purpose of the meeting. The purpose of a meeting may be stated in general terms. An Owner may authorize another person or the Board of Directors to vote for such Owner by signing and delivering a written proxy to the Secretary of the Association or to a member of the Board of Directors. The date of mailing, by regular mail, of a Notice in the manner provided in this paragraph or the date of personal delivery of such Notice by the Association shall be considered as the date Notice is delivered. Each Owner is responsible for keeping the Association advised of his or her current address. If an Owner fails to advise the Association of Owner's current address, the Association may rely upon the last known address or the address shown on the Real Estate Tax Assessment List for Gallatin County.

E. Quorum:

No meeting, annual or special, shall be convened to conduct business unless notice has been given and a quorum is present, in person or by proxy. A quorum shall consist of at least thirty percent (30%) of the total aggregate voting interest of the Owners, based upon one vote per Unit. At any time, during any Association meeting that a quorum is not present, matters may be discussed but there shall be no voting on any matter and such meeting may be adjourned and a new date, time and place for the meeting shall be set by the Board of Directors. If a matter is submitted to a vote by written ballot, the ballots returned to the Association shall be counted towards the quorum for the matter voted upon.

F. Written Ballots:

Any matter that may be voted upon by the Owners may be submitted to the Owners by written ballot. A vote by written ballot must be authorized by a majority of the Board of Directors.

A written ballot must:

- (a) set forth each proposed action; and



- (b) provide an opportunity to vote for or against each proposed action.

Approval by written ballot pursuant to this section is valid when:

- (a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action;
- (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot; and
- (c) the number of votes equal or exceed the number of votes which are required to approve a matter without a meeting.

All solicitations for votes by written ballot must:

- (a) indicate the number of responses needed to meet the quorum requirements;
- (b) state the percentage of approvals necessary to approve each matter other than election of Directors; and
- (c) specify the time by which a ballot must be received by the Association in order to be counted.

A written ballot may not be revoked.

VOTING

Each Owner shall have one vote per Unit. If there is more than one Owner, the Owners must agree on how to vote the single vote per Unit and provide one address to the Association for the purpose of sending notices and written ballots.

Whenever a quorum is present at a meeting of the Association, a majority of those present, in person or by proxy, may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Covenants or the laws of the State of Montana direct otherwise.

BOARD OF DIRECTORS

The business and affairs of the Association shall be managed, administered and governed by a Board of Directors elected from among the Unit Owners provided however, until the Declarant, Durston Development Corp., Inc., transfers title to ninety percent (90%) of the commercial area Units to third party purchasers, the Declarant and its successors and assigns shall have the right, but not the obligation to remove and appoint the majority of the Board of Directors. The Declarant may assign its rights to a subsequent Developer of the property. The Declarant may appoint its members, officers, employees, managers or agents of Declarant to the Board of Directors pursuant to this section. The number of Board of Directors shall be set by the



Owners at each annual meeting and shall not be less than three (3) or more than nine (9). The initial Board appointed by Declarant may be two (2) Directors. The Owners shall nominate and elect the Directors, subject to Declarant's right to appoint a majority of the Directors. Such Board shall have all of the powers, duties and responsibilities attendant to the general management, administration, enforcement and control of the Association and the Covenants and Bylaws. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these Bylaws and in the Covenants.

Subject to Declarant's right to appoint a majority of the Directors, the manner of election of the Board of Directors shall be as follows:

First the number of persons on the Board of Directors shall be set by a majority vote of the Owners present at a duly noticed meeting at which a quorum is present in person or by proxy. Once the number of Directors is set, the number shall remain the same unless a new number is set at an Association meeting. Nominations for vacancies on the Board will be accepted from any of the Owners present at the meeting of the Association, provided a nominee for a Board member must be a Unit Owner, or who is an officer, partner, member or authorized agent in an entity owning a Unit. Voting will be non-cumulative with each Association member having one vote per Unit. The persons nominated for the vacant Director positions shall be voted upon by the Owners present at the meeting in person, by proxy or by written ballot each casting their vote for one nominee for each vacant position. The nominees receiving the most votes shall be the elected Directors. In the event of a tie vote, the existing Board shall appoint one of the tied nominees by a majority vote. Board members shall serve for such terms as shall be set by the majority of the voting interests present at the meeting, or until their successors are elected; provided that the terms of the Directors may be staggered so that approximately one third of the Directors; terms shall terminate each year after the first annual meeting. The Directors shall be elected by those present, in person, by proxy or by written ballot. The initial Board may consist of two (2) persons appointed by the Declarant, which Board shall serve until the first annual meeting of the Association, at which time a new Board shall be elected, or appointed, consisting of at least 3 members. Between annual meetings of the Association, the Board may appoint a replacement Director in the event of the death, resignation, incapacity or removal of a Director subject to Declarant's right to appoint.

OFFICERS OF THE BOARD OF DIRECTORS

The Board shall elect a President, Secretary and Treasurer. The Secretary and Treasurer position may be combined. The President and Secretary must be Board members. The Treasurer need not be a Board member or a Unit Owner. The Board may also elect such other officers from among the Board as it deems advisable including a Vice-President and Assistant Secretary or Assistant Treasurer.



The President shall be the chief executive officer of the Corporation. The President shall have such duties and authority as the Directors may prescribe.

The Secretary shall keep the corporate records and minutes of meetings and shall have such other duties as the Directors may prescribe.

The Treasurer shall keep the financial records of the Corporation and shall be responsible for the bookkeeping and such other duties and responsibilities as shall be prescribed by the Directors. The Treasurer need not be a Member or a Director.

ARTICLE VI
MATTERS PERTAINING TO DIRECTORS

At any annual or special meeting of the Association, or by written ballot or by a combination thereof, any member of the Board of Directors elected by the members may be removed prior to the end of his or her term by a majority of the total votes of the members. Such vacancy shall be filled by a vote of the Owners subject to Declarant's right to remove and appoint a majority of the Board. If the vacancy is not filled by the Owners, the Board or Declarant shall appoint a member to fill the vacancy. Such removal matter must be announced in the notice of an annual or special meeting or in the written ballot.

No member of the Board of Directors shall receive any compensation for acting as such, except as shall be authorized by the Board of Directors by unanimous vote. Nothing herein, however, shall be construed to preclude compensation being paid to managers who are hired by the Board of Directors or compensation to a Director providing materials or services to the Association outside his or her Directorship. A member of the Board of Directors may be hired as a manager. A member of the Board of Directors may be reimbursed his or her actual expenses if the expense is authorized by a majority of the Board of Directors.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

In addition to the powers and duties express or implied in the Covenants and Montana law, the Board shall have the following powers and duties:

- A. To enter into contracts and agreements as are necessary to effect the business of the Association.
- B. To provide for the construction, installation, acquisition, replacement, operation, maintenance and repair by the Association of buildings, equipment, common areas, facilities, service streets, roads, bridges, lighting, garbage removal and disposal in common areas, security of persons or property, fire protection, and other municipal or quasi-municipal services and functions. Contracts for such work with third parties which provide for a term or duration in excess of three years must be approved by a majority of the votes of the members which approval may be ratified at the annual or any special meeting of the Association.



- C. To make and establish rules and regulations for the use and governance of the subdivision, the common areas, roads, parking of vehicles, internal trails and common facilities and the performing of such functions, the taking of such action and operating in such areas as are within the authority and jurisdiction of the Association. The rules and regulations may establish reasonable sanctions and/or fines for violations.
- D. To make and adopt budgets and assessments as described in these Bylaws and the Covenants.
- E. To take necessary and appropriate action to collect assessments from members, including the filing of liens and prosecuting foreclosures as provided in these Bylaws and the Covenants.
- F. To call meetings of the Association, both annual and special, and to preside over such meetings and to give appropriate notice of such meetings as required by these Bylaws.
- G. To formulate and introduce resolutions at the meetings of the Association.
- H. To hold meetings of the Board of Directors as are necessary to conduct Association affairs.
- I. To exercise ultimate decisional power in and on all matters affecting the Association.
- J. To pay the expenses of the Association, including but not limited to administrative expenses, management fees, operating expenses, expenses of enforcement of the Covenants, all taxes or assessments and to contract and pay for such insurance as may be necessary in the best interests of the Association, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage.
- K. To conduct elections of the Board of Directors to fill vacancies on the Board by a majority of the remaining Board, should the vacancy not, however, be filled by the Board, it may be filled by an election at an annual or special meeting wherein each membership interest shall have one (1) vote.
- L. To maintain lists of members.
- M. To keep records of all assessments made, all expenditures, the status of each member's payments of assessments and to make such records accessible at reasonable times to all members.
- N. To provide municipal type facilities for the safety, comfort, health, well-being and pleasure of the Owners, their guest and invitees.
- O. To promote, conserve and preserve the premises.
- P. To do any and all things necessary to carry into effect these Bylaws and to implement the purposes as stated in the Articles of Incorporation and Covenants and to do any and all things necessary to comply with and enforce the Covenants.



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- Q. To deal with agencies, officers, boards, commissions, departments and bureaus or other governmental bodies in a federal, state, county and local basis to carry out the above powers, duties and responsibilities.
- R. To establish accounts for operating and/or development funds as set out in the Covenants.
- S. To provide, through assessments, an adequate reserve fund for maintenance, repair and replacement of those elements in the common area that must be replaced or maintained on a periodic basis
- T. To adopt, amend and administer Design Guidelines for construction, placement and maintenance of homes, garages, out buildings and other improvements and landscaping.
- U. In addition to the above Owners, the Board of Directors may act and perform the functions of the Architectural Review Committee (ARC), or in the alternative, may appoint an ARC to administer and enforce the Design Guidelines.
- V. To provide for the management of the Association by hiring or contracting with suitable and capable management and personnel for the day-to-day operation, maintenance, upkeep and repair of the general common elements. The Board of Directors may be designated as management.
- W. To delegate authority to an officer and/or a manager for the conduct of the day-to-day Association business and to carry out specified duties and powers of the Board. However, such authority shall be precisely defined with ultimate authority, supervision and responsibility at all times residing with the Board of Directors.
- X. To provide a means of hearing grievances of Unit Owners and responding appropriately thereto.
- Y. To prepare an annual budget for the Association in order to determine the amount of the assessments payable by the Unit Owners, to meet the general common element expenses and reasonable reserve for contingencies and allocate and assess such charges among the Unit Owners according to their respective interests in the general common elements, and to submit such budget to the Unit Owners on or before the date of the annual meeting.
- Z. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Unit Owners or from any person or persons owing money to the Association and to levy a penalty and to charge interest on unpaid amounts due and owing.
- AA. To defend or prosecute, in the name of the Association, any and all lawsuits wherein the Association is a party.

- BB. To establish a bank account for the Association and to keep therein all of the funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.
- CC. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

ARTICLE VIII
ASSESSMENTS

The Association, acting through its Board of Directors, shall have the power to levy assessments on its members for the purposes set forth in the Covenants. The assessments levied by the Association shall be used to promote health, safety, enjoyment and welfare of the Owners of the property, their guests and invitees and for the improvement of the maintenance of the common areas, common facilities, common open spaces and park areas, to include common element maintenance and utility line maintenance, landscape maintenance in common areas, common open spaces and public park, property liability insurance, Association employees' wages, mailing costs, common signage, common utility expenses and traffic control signs, enforcement fees and costs, administrative costs, professional fees, litigation costs and fees and other related or necessary expenses incurred by the Association and a reasonable reserve for contingencies.

The assessments provided for herein shall commence, for each phase of the development, independently of the other phases and assessments will commence to accrue on the first day of the month following the conveyance of the first Lot in each phase by the Developer to any third party or entity. Assessments may be levied monthly, quarterly or annually by the Association.

There shall be two classes of assessments allowable under these Bylaws: (1) Capital assessments, and (2) Operating assessments.

Capital assessments shall be for the purpose of acquiring, replacement or the construction of new common facilities, or the major repair or renovation on existing common facilities.

Operating assessments shall be for the purpose of sustaining day-to-day and annual costs, expenses and activities of the Association, including maintenance of common areas, common elements and easements, roads, facilities and public park, maintenance of common landscaping, repairs, accounting and legal expenses for the Association, common utility expense, property and liability insurance and other ordinary expenses.

The Board of Directors shall have the final authority to determine under which general heading to make various assessments. Further, the Board may make assessments in either or both categories on each person or persons or entity having a membership interest.

The Board of Directors must first obtain the approval of at least fifty-one percent (51%) of the membership interests before taking the following action:



- A. Making any assessment for a capital improvement costing in excess of \$10,000.00.
- B. Mortgaging, encumbering or otherwise disposing of any property of the corporation, whether real or personal, in excess of the amount of value of \$10,000.00.

Assessments may be made on an annual, quarterly or monthly basis and a statement thereof shall be mailed by the Secretary of the Board to each member at his or her address of record.

All assessments become due and payable thirty (30) days after the date of mailing, after which they will become delinquent. The Board shall have authority to impose reasonable interest charges and penalties on amounts which are overdue. Any assessment not paid when due shall bear interest at a rate of twelve percent (12%) per annum. The Association may bring an action against the Owner personally obligated to pay the assessment, or foreclose a lien filed against the property. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use or abandonment of his or her Unit or the common areas, common open space or common elements, easements and facilities.

All assessments shall be levied and assessed to the Members, and against their respective Unit(s), in accordance with each Owner's percentage of membership interest in proportion to the total number of membership interests calculated as set forth in Article IV.

**ARTICLE IX
BUDGET**

Budget:

Each calendar year the Board shall prepare, or cause to be prepared, for review of the Unit Owners, an annual budget which must be approved and adopted by a majority of the Board. The budget shall include the expected receipts and expenditures for the coming fiscal year, including estimated funds for an adequate reserve for contingencies and expense overruns. The reserve shall not exceed a reasonable amount. The budget shall provide and maintain funds for the operation and maintenance of the Association and enforcement of the Declaration and Bylaws.

A copy of the proposed budget shall be made available to each Unit Owner before or at the annual meeting of the Association. The budget shall be reviewed and discussed by the membership and Board of Directors. The budget may be adopted or amended by either the approval of the Board of Directors or by a majority of the votes of the Unit Owners present at the meeting or represented by proxy or by written ballot. The budget shall form the basis for the assessments. If the budget is amended, a copy of the amended budget shall be furnished to each member. The annual budget shall be presented at each annual meeting of the members. An amended budget may be adopted by the Board at any time to reflect the actual receipts and expenditures and may be presented to the Association at such special meeting as may be called for this purpose. Until the first annual meeting of the membership, the initial Board of Directors shall prepare the Budget and assess the membership for their share of the budgeted items.



Financial Report:

A financial report of the receipts and disbursements and balance of accounts of the Association shall be prepared at least annually by the Treasurer of the Association and a copy of the report shall be furnished to each member of the Board of Directors and discussed before or at the annual meeting. A financial report shall be presented to the Members at the annual meeting or at such special meetings as shall be called for this purpose.

Board as Manager:

If the Board chooses not to appoint a manager, all of the managerial functions of the Association shall be performed by one or more or all of the Board members to whom the job is delegated by a majority of the Board of Directors. The Board may pay a Board member a reasonable salary and actual expenses for his or her management services.

ARTICLE X
LIENS FOR ASSESSMENTS AND FORECLOSURES

All sums assessed, but unpaid for either capital or operating assessments, shall constitute a lien against any Unit when the said assessment remains unpaid after thirty (30) days following the date when the same became delinquent. From the date of recording, such lien shall be superior to all other liens and encumbrances, except for tax and special assessment liens placed by statutory authority, other statutory liens, and the lien of any first mortgage or a first Trust Indenture of record.

To evidence of record such liens, the Association shall prepare a written Notice of Claim of Lien, setting forth the amount of such unpaid assessments, the date due, the amount of the accrued interest, the late charges thereon, the name and last known address of the Owner of the Unit and a description of the Unit. Such notice shall be signed and verified by the President of the Board of Directors, the manager or the Secretary of the Association, and may be recorded in the office of the County Clerk and Recorder. Such lien shall attach from the date of the recording of such notice. Such lien may be enforced by the foreclosure of the lien by the Association as provided in the Covenants or Montana law. The Association may also proceed to collect the amount of past due assessments, costs and attorney's fees, interest thereon and late charges from the Owner of the Unit directly by legal action or through other legally allowable collection procedures. In any such proceedings, the Owner shall be required to pay the costs, expenses, and attorney's fees incurred for filing a lien, and in the event of collection or foreclosure proceedings, additional costs, all expenses and reasonable attorney's fees incurred.

ARTICLE XI
VOTING INTEREST

Whenever any Unit or Units are owned or leased by two or more persons or by an entity, such person, or persons, or entity must agree, prior to or at a meeting where voting may be



allowed or voting by written ballot, among and between themselves, determine who is entitled to vote the single vote per Unit and in what manner the same shall be voted. If in the judgment of the Board, a bona fide and irreconcilable dispute arises as to the voting or right to vote a membership interest, such interest may be declared to be a dispute and for the time such interest is in dispute, it shall have no voting rights.

ARTICLE XII
BOARD MEMBERS

Members of the Board and their officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

- (1) shall not be liable to the Owners as a result of their activities as such, for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;
- (2) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- (3) shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith;
- (4) shall have no personal liability arising out of the use, misuse or condition of the Property which might, in any way, be assessed against or imputed to them as a result of, or, by virtue of their capacity as such.

ARTICLE XIII
COMMITTEES

Pursuant to the Title 35, Chapter 2, Mont. Code Ann. and, subject to the restrictions stated therein, the Board may appoint committees to act for the Board and to exercise the authority of the Board on matters referred to them by the Board. Such committees may be dissolved at any time by the Board of Directors.

ARTICLE XIV
INSURANCE

The Board shall purchase insurance policies to protect the property of the Association against casualty loss and public liability and to insure the Association, the officers, agents and the Board members, when acting in their official capacity, from liability for negligent acts and claims for property damage and personal injury. The extent and specific nature of the policies, deductibles and coverage shall be determined by the Board.



**ARTICLE XV
COVENANTS**

No acts by the Association or by the Board of Directors shall be contrary to the Covenants on file and of record with the Clerk and Recorder of Gallatin County, Montana, and amendments thereto. On its own initiative, the Board may take such action as it deems necessary, including the taking of legal action and initiating suit to enforce or defend the Covenants. The Covenants are incorporated herein by this reference.

**ARTICLE XVI
AMENDMENT OF BYLAWS**

Except as otherwise provided in the Covenants and herein, these Bylaws may be amended at any annual meeting or special meeting of the Association providing that a majority of Directors approves the amendment and a copy of the proposed revision is included in the Notice of such meeting. Upon a vote of seventy-five percent (75%) of the members present at the meeting at which a quorum is present, the amendment shall be deemed adopted. The Bylaws may also be amended by 75% favorable vote of the aggregate voting interest of the Owners by written ballot mailed or personally delivered to the Owners and returned to the Association. The Secretary shall, as soon as practicable after the adoption of an amendment, prepare a copy of the Bylaws as amended for certification by the President and Secretary of the Association. Such amended Bylaws shall then be certified by the Chairman or Vice-President of the Board or by the Secretary as duly adopted in accordance with the Bylaws and shall be placed in the corporate records and a copy mailed to each Owner. Bylaws as amended shall become effective at the time of such mailing.

Notwithstanding the provisions of this paragraph, the Declarant's written approval of any amendment must be obtained before the amendment is effective until the Declarant has sold or transferred title to 90% of the Lots to third parties. The Board of Directors may amend these Bylaws by a two-thirds vote of the Board of Directors.

Within thirty (30) days after adoption of an amendment, a copy shall be mailed to each Owner and recorded with the Clerk and Recorder of Gallatin County.

**ARTICLE XVII
DUE PROCESS BY ASSOCIATION**

In the event an action is taken by the Association against any individual Owner to enforce an assessment, any part of the Bylaws or Declaration, or any rule or regulation properly adopted by the Association, said Owner shall be afforded the protection of due process with includes, but is not limited to, the following:

- A. Adequate notice in writing of any default with a reasonable time to cure the default.



- B. If the Owner contest the allegations of default and advises the Association of such Owner's contest in writing, such Owner shall have the following options:
 - (1) An opportunity to defend himself or herself against any allegations of default before the Board of Directors.
 - (2) An opportunity to present witnesses and cross-examine opposing witnesses.
 - (3) An opportunity to receive a formal hearing before an impartial officer or arbitrator.
 - (4) To findings of fact by the hearing officer or arbitrator in accordance with the evidence presented.

- C. To a penalty proportionate to the offense, such as suspension of voting rights, suspension of the right to be elected as a Director or officer or to continue as a Director or officer, or a reasonable fine or late fee imposed by the Board of Directors, or in the event of an action for unpaid assessments, the costs of collection, interest and reasonable attorney's fees.

ARTICLE XVIII
INITIAL BOARD OF DIRECTORS

Until the first annual meeting of the Association, the following persons shall constitute the Board of Directors and initial officers:

| <u>NAME</u> | <u>OFFICE</u> | <u>ADDRESS</u> |
|------------------|----------------|---|
| Kevin G. Cook | President | 2066 Stadium Drive, Suite 202B Bozeman, MT 59715 |
| Gene E. Cook | Vice President | 2066 Stadium Drive, Suite 202B Bozeman, MT 59715 |
| James A. McLean | Secretary | 2066 Stadium Drive, Suite 101 Bozeman, MT 59715 |
| Harry Stannebein | Treasurer | 220 West Lamme Bozeman, MT 59715 |

ARTICLE XIX
SEVERABILITY

A determination of invalidity of any one, or more, of the provisions or conditions hereof, by judgment, order or decree of a Court shall not effect, in any manner, the other provisions hereof which, shall remain in full force and effect.

ARTICLE XX
INTERPRETATION

The Board of Directors shall have the power to interpret all the provisions of these Bylaws and such interpretation shall be binding on all persons. These Bylaws may be amended from time to time whenever at least 66²/₃% of the membership interests shall have voted in favor of such amendment, provided that until Durston Development Corp. sells 90% of the Lots in the apartment area, it must first approve the amendment.

The undersigned Directors certify that these Bylaws were adopted by all of the Board of Directors and all of the Unit Owners for **Walton Homestead Apartment Owners Association** on the 13th day of April, 2004.

[Signature]
Kevin G. Cook, Director/President

[Signature]
Gene E. Cook, Director/Vice President

[Signature]
James A. McLean, Director/Secretary

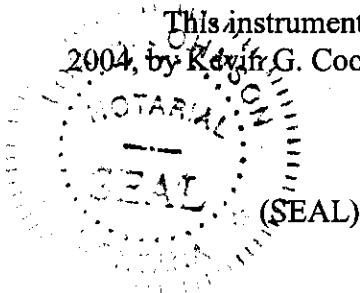
[Signature]
Harry Stannebein, Director/Treasurer

APPROVED BY DURSTON DEVELOPMENT CORP., OWNER

BY: [Signature]
ITS Vice President

STATE OF MONTANA)
 :SS
County of Gallatin)

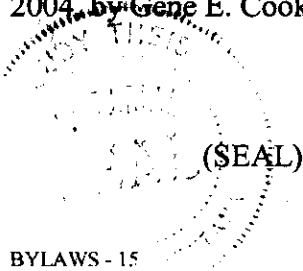
This instrument was acknowledged before me on the 13th day of April, 2004, by Kevin G. Cook.



[Signature]
LORI H. JOHNSON
Notary Public for the State of MONTANA
Residing at: Bozeman
My Commission Expires: 2-23-2006

STATE OF MONTANA)
 :SS
County of Gallatin)

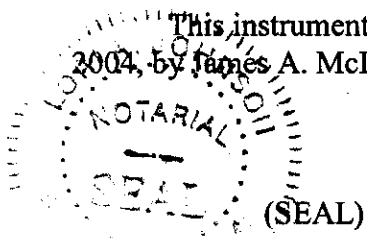
This instrument was acknowledged before me on the 13 day of APRIL, 2004, by Gene E. Cook.



[Signature]
JUDY THEILS
Notary Public for the State of MONTANA
Residing at: LIVINGSTON, MT
My Commission Expires: 8-22-2006

STATE OF MONTANA)
)
:SS
County of Gallatin)

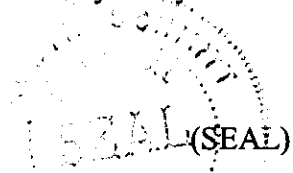
This instrument was acknowledged before me on the 13th day of April,
2004, by James A. McLean.



Lori A Johnson
LORI A JOHNSON
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 2-23-2006

STATE OF MONTANA)
)
:SS
County of Gallatin)

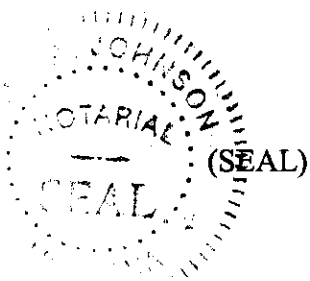
This instrument was acknowledged before me on the 13th day of April, 2004,
2004, by Harry Stannebein.



Robyn Schmitt
Notary Public for the State of MONTANA
Residing at: BOZEMAN, MT.
My Commission Expires: 9/19/2006

STATE OF MONTANA)
)
:SS
County of Gallatin)

This instrument was acknowledged before me on the 13th day of April,
2004, by Kevin Cook as Vice-President of DURSTON DEVELOPMENT CORP.



Lori A Johnson
LORI A JOHNSON
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 2-23-2006