

AMENDED BY-LAWS OF THE BAXTER  
HOMEOWNERS ASSOCIATION

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1. PURPOSE AND APPLICATION:

These Articles are and shall be the By-Laws of The Baxter Homeowners Association ("Association"), pursuant to an affirmative vote of more than 75% of the Unit owners. These By-Laws shall, upon being recorded with the County Clerk and Recorder, County of Gallatin, State of Montana, become a part of the Declaration for The Baxter, and shall govern and control the administration of The Baxter. All Unit Owners, their guests and any renters or sub-lessees, present and future shall have the rights and responsibilities described in these By-Laws and shall be subject to the provisions thereof.

The acquisition of an ownership interest in a unit in The Baxter signifies that the Owner accepts, ratifies and agrees to comply with these By-Laws.

As stated in the Amended Declaration ("Declaration"), which is recorded simultaneously, these Amended By-Laws contain amended provisions, as well as a restatement of those sections which are unchanged. All of the By-Laws are contained in this instrument for the sake of convenience and this document shall be substituted for and replace, in their entirety, the previous By-Laws. Nothing contained herein, however, shall be construed or interpreted in such a manner that any previous transaction involving any individual unit, or the condominium as a whole, shall be invalidated.

2. MEMBERSHIP:

Persons owning Units in The Baxter, or owning a unit in any real estate tenancy relationship recognized by the State of Montana, shall be members of the Association, which shall be the same as the Association established in the Amended Declaration for the condominium. Membership begins concurrently with the acquisition of an ownership interest in a unit and terminates at the time such ownership interest is terminated, but such termination shall not relieve any Owner of liability for obligations incurred while a member of the Association. Membership in the Association does not in any way negate or impair any Owner's legal remedies, his or her right to bring legal action, or defenses to any and all actions involving the Association, other Owners, or the Management which may arise from or be incidents of ownership.

3. OBLIGATIONS:

Each Owner shall be obligated to comply with the By-Laws, the Declaration, and the laws of Gallatin County and the State of Montana. Such obligation shall include, but not be limited to, the paying of assessments to the Association, and the adherence to the protective covenants which are part of the Declaration. Failure of any Owner to abide by these By-Laws and all rules made pursuant thereto, the Declaration, and any applicable laws, shall be grounds for appropriate legal action by the Association, or by an aggrieved Owner against such non-complying Owner.

4. MEETINGS AND VOTING:

a. Regular Meetings: There shall be a regular meeting of the Association annually on the first Monday of March each year, or on such other date properly announced by the Association. Any first lienholder shall have the right to have a representative attend any regular meeting and shall be given notice thereof.

b. Special Meetings: Pursuant to these By-Laws, the Association may at any time hold special meetings, notice of which must be sent to any first lienholders, who shall have the right to have a representative attend; provided that such lienholders have provided to the Association the notice required by the Declaration. Such special meetings may be called on the initiative of the Chairman of the Association, or a signed request of the Manager, or a petition signed by 25% of the Unit Owners. Notice of any special meetings must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting, unless 75% of the aggregate interest present agrees otherwise.

c. Notice: Notice of all meetings, regular or special, shall be mailed by the Association's Secretary to every Unit Owner and first lienholders of record at their address of record, at least ten (10) days prior to the time for holding such meeting. Such notices shall specify the date, time and place of the meeting and shall make provision to allow the voting of each Owner's interest by proxy at the discretion of the Owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served.

d. Quorum: No meeting, regular or special, shall be convened to conduct business, unless a quorum is present in person or by proxy. A quorum shall consist of at least fifty-one percent (51%) of the total aggregate interest of the Condominium. At any time, during any meeting that a quorum is not present, such meeting shall be adjourned forthwith. For purposes of Board meetings, a quorum shall consist of four Board Members.

5. VOTING INTEREST:

Each Unit Owner at any Association meeting shall have a voting interest equal to his or her percentage of interest in the general common elements as set forth in the Declaration, a copy of which is being filed concurrently with the filing of these By-Laws with the Clerk and Recorder of Gallatin County, State of Montana.

Such percentage factor shall be the voting interest of each Unit Owner on all matters affecting the general business of The Baxter, on all matters affecting the common elements, assessments for the common elements, and on all matters upon which the Association agreed to have voting by the voting interests. Voting upon matters affecting limited common elements and assessments for limited expenses shall be only by Owners having a unit or interest in units located in the building affected.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, those present may do any and all acts they are empowered to do unless specific provision of these By-Laws, the Declaration, or the laws of the State of Montana direct otherwise.

6. BOARD OF DIRECTORS:

The governance of The Baxter shall be by a Board of six Directors, elected from among the Unit Owners. Such Board shall have all powers and responsibilities attendant to the general administration and control necessary to carry into effect the powers and duties specified by these By-Laws.

7. OFFICERS OF THE BOARD OF DIRECTORS:

The Association shall elect from its membership a Board of Directors which shall include a President, Vice-President, Secretary, Treasurer, and two additional Board Members. Two offices may be combined at the discretion of the Association; provided that the number of board members shall remain at six. The manner of election of the Board shall be as follows:

At the annual meetings of the Association, nominations for

positions on the Board will be accepted from any of the Unit Owners present. Voting will be non-cumulative with each Association member having a vote equal to his or her percentage of interest in the general common elements. Board Members shall serve for one year and shall be elected by majority vote of those present at any annual or special meeting.

i. President: The President shall preside at all meetings of the Association and meetings of the Board. He or she shall have such other powers and duties as are provided in the Declaration, these By-Laws or by law, and as are ordinarily exercised by the presiding officer of an association, including the appointment of committees from among the Owners, and such other powers as may be delegated to him or her by the Board or the Association from time to time.

ii. Vice-President: The Vice-President shall assist the President and shall preside over meetings of the Board or the Association in the absence or incapacity of the President. In the event that the President is unable to complete his or her term in office for any reason, the Vice-President shall succeed to the President's position for the balance of the term.

iii. Secretary: The Secretary shall record the proceedings of the meetings of the Board and meetings of the Association, shall keep such records and all other records, documents and other papers of the Board and of the Association and shall have such other powers and duties as may be delegated to him or her by the Board or the Association from time to time.

iv. Treasurer: The Treasurer shall be responsible for the funds of the Association and shall be responsible for keeping and having kept full and accurate financial records and books of account showing all receipts and disbursements of the Association and any other financial data required by the Board or the Association. He or she shall be responsible for the deposit of all funds in the name of the Board or the Association in such depositories as may be designated by the Board from time to time and shall have such other powers and duties as may be delegated to him or her by the Board or the Association from time to time. The Board may delegate such of the Treasurer's powers and duties to the Manager as it deems to be advisable.

#### 8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS:

The Board of Directors shall have the following powers and duties:

- a. To call annual meetings of the Association and give due notice thereof.
- b. To conduct elections of the Board.
- c. To enforce the provisions of the Declaration and By-Laws of The Baxter by appropriate action.
- d. To promulgate rules and regulations for the use of the common elements and for the occupancy of the units so as to not interfere with the peace and quiet of all the residents. Such rules must be approved by seventy-five percent (75%) of the Unit Owners at any regular or special meeting of the Association, unless a higher percentage is required by the Montana Unit Ownership Act.
- e. To provide for the management of The Baxter by hiring or contracting with suitable and capable management personnel for the day-to-day operation,

maintenance, upkeep and repair of the general common and limited common elements.

f. To levy assessments as allowed by the Declaration, these By-Laws, and the State of Montana, and to provide for the collection, expenditure and accounting of the assessments.

g. To collect the assessments for the Association.

h. To pay for the expenses of the maintenance, repair and upkeep of the general common elements and the limited common elements, and to approve payment vouchers, either at regular or special meetings.

i. To delegate authority to the Manager for the conduct of condominium business, to carry out the duties and powers of the Board; provided, however, that such authority shall be precisely defined with ultimate authority at all times residing in the Board of Directors.

j. To provide a means of hearing grievances and foreclosure proceedings of Unit Owners and to observe all due process requirements imposed upon owners associations for condominiums.

k. To meet at regularly scheduled times and hold such meetings open to all Unit Owners or their agents.

l. To prepare an annual budget for the condominium in order to determine the amount of the assessments payable by the Unit Owners to meet the general common and limited common expenses. To allocate and assess such charges among the Unit Owners according to their respective interests in the general common and limited common elements and to submit such budget to the Unit Owners on or before the date of the annual meeting.

m. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.

n. 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 condominium, and to levy a penalty and to charge interest on unpaid amounts due and owing.

o. To defend in the name of the Association any and all lawsuits wherein The Baxter is a party defendant.

p. To enter into contracts with third parties to carry out the duties set forth, for and in behalf of the Board of the Association.

q. To establish a bank account(s) for The Baxter and to keep therein all 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.

r. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration and to do all those things which are necessary and reasonable in order to carry out the governance and operation of the Condominium.

s. To make repairs, alterations, additions and improvements to the general common and limited common elements consistent with managing the condominium in a first class manner and in the best interests of the Unit Owners.

t. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration.

u. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

v. To allow first lienholders to inspect Association and Board records upon proper notice and during reasonable business hours.

**9. VACANCIES AND REMOVAL:**

Should a vacancy occur on the Board of Directors, the Board, subject to the exception described below, shall appoint a member of the Association to serve for the unexpired term. Such vacancy shall be filled no later than the next regular Board meeting after which it occurs. Should such vacancy not be filled by the Board, the Association may fill such vacancy at the next meeting of the Association.

At any regular or special meeting of the Association, any member of the Board may be removed by a majority of the aggregate interests at such meeting, after which the vacancy shall be filled by the Association. The intent to remove a director must be announced in the notice of such regular or special meeting. The personal delivery of such notice by the Secretary of the Association shall be considered service of the notice.

**10. COMPENSATION:**

No member of the Board of Directors shall receive any compensation for acting as such, except to be reimbursed for expenses incurred in attending Board meetings or carrying out Board functions. Nothing herein however, shall be construed to preclude compensation being paid to Managers who are hired by the Board.

**11. DUE PROCESS:**

In the event there shall be default, except for the payment of assessments, by a Unit Owner, or violation of any of the provisions of the Declaration or By-Laws, or non-compliance, notice of the same shall be sent to the Owner in writing by the Board of Directors, setting forth the nature of the violation or non-compliance and providing for a time certain when the Unit Owner shall be confronted by the Board to respond. At such hearing the Unit Owner shall be confronted by the person or persons bringing the charges if they are individuals other than the Board Members, or such owner may be confronted by the Board Members, themselves. The Owner shall have an opportunity to cross-examine such individuals and present his or her own witnesses, exhibits or testimony in his or her own behalf. At such hearing, if the Owner desires, he or she may request an impartial hearing examiner to be present to conduct the proceedings. Following such hearing the Board shall enter its findings of fact following the recommendations of any examiner and setting forth its decision and any actions it deems appropriate if it finds in fact that a violation or default has occurred.

**12. LIABILITY OF MEMBERS OF THE BOARD OF DIRECTORS:**

No member shall be liable to the Association or any of the members or Owners or any third party for harm, injury, loss or damage suffered because of any action taken or omitted to be taken by any member of the Board serving as Board member in good faith if:

a. The Board member exercised and used the same degree of care and skill as a prudent man would have exercised or used under

the circumstances in the conduct of his or her own affairs, or;

b. The Board member took or did not take action in reliance upon advice of counsel or upon statements or information of other Owners or employees of the Association which he has reasonable grounds to believe.

13. MANAGERS:

The Manager shall be appointed and/or removed by the Board of Directors. The Manager or any member of the Board or Association handling Association funds or having power to withdraw or spend such funds shall be bonded, and shall maintain records of the financial affairs of the condominium. Such records shall also detail all assessments made by the Association and the status of payments of assessments by all Unit Owners. All records shall be available for examination during normal business hours by any Owner, or his or her assigned representative. All functions and duties herein provided for the Manager may be performed by the Board, or the Chairman, if the Board should decide not to have a manager. The liability imposed upon the manager shall be limited in the same manner as for Board Members, unless a greater duty is imposed by law.

a. Accounts: The receipts and expenditures of the Association shall be under the direction of the Manager and be classified as appropriate into general common expenses and limited common expenses and shall include a provision for:

1. Current Expenses: Which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserve or to betterments. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year.

2. Reserve for Deferred Maintenance: Which shall include funds for maintenance and items which occur less frequently than annually.

3. Reserve for Replacement: Which shall include funds for repair or replacement required because of damage, depreciation or obsolescence.

4. Betterments: Which shall include the funds to be used for capital expenditures for additional improvements, or additional personal property which shall be a part of the common elements.

b. The Manager shall prepare and submit to the Board a budget, each calendar year, which must be approved and adopted by the Board. The budget shall include the estimated funds required to defray the general common and limited common expenses and to provide and maintain funds for the foregoing accounts, according to good accounting practices.

Copies of the budget and proposed assessments shall be transmitted to each member on or before the 10th day of December preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended budget shall be furnished to each member.

c. A financial report of the accounts of the Association shall be made annually, and a copy of the report shall be furnished to each member at the annual meeting.

The Manager shall generally operate and manage the condominium for and on behalf of the Unit Owners and shall have such other powers and authority as the Board may designate. If there is no Manager or if the Manager resigns, is terminated or his or her contract expires and a successor is not chosen, the Board shall perform all the duties of the Manager until a Manager shall be replaced.

14. AMENDMENT OF BY-LAWS:

These By-Laws may be amended at any regular or special meeting of the Association providing that a copy of the proposed revision is included in the notice of such meeting. Upon an affirmative vote of seventy five percent (75%) of the aggregate interest in the condominium, the amendment shall be declared adopted. The Secretary shall, as soon as practicable after adoption, prepare a copy of these By-Laws as amended for certification by the President and Secretary of the Association. Such amended and certified By-Laws shall then be filed and recorded in the office of the County Clerk and Recorder of Gallatin County, State of Montana. By-Laws as amended shall become effective at the time of such recording.

15. ASSESSMENTS:

Each owner shall be assessed for general common expenses in accordance with his or her percentage of interest in the general common elements as set forth in the Declaration. Such assessments, and assessments for limited common expenses, shall be collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amounts of assessments described above and any other assessments allowed by these By-Laws, the Declaration and by the State of Montana, shall be fixed by the Board of Directors. Notice of each Owner's assessments shall be mailed to the Owner at his or her address of record.

16. NOTICE OF DEFAULT TO LIENHOLDERS:

A first lienholder, upon request, will be entitled to written notification from the Owners Association of any default in the performance by the individual Unit borrower of any obligation under the condominium documents which is not cured within sixty (60) days. The obligation to provide such notice shall be limited, as set forth in the Declaration.

17. NOTICES - DAMAGES:

The Owners Association shall notify all first lienholders in writing of any loss to or taking of the common elements of the condominium, if such loss or taking exceeds \$10,000.00, or damage to an individual unit securing a mortgage held by the first lienholder exceeds \$1,000.00.

18. FISCAL YEAR:

The fiscal year of the Association shall commence on January 1 of each year and end on December 31 of each year.

19. MISCELLANEOUS:

a. Costs and Attorney's Fees: In any proceeding arising because of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court.

b. No Waiver of Rights: The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the condominium documents, shall not constitute a waiver of the right of the Association or Owner to enforce such right, provision, covenant or condition in the future.

c. Election of Remedies: All rights, remedies and privileges granted to the Association or an Owner pursuant to any term,