

BY-LAWS  
OF  
NORTH OF NELL CONDOMINIUM ASSOCIATION, INC.

ARTICLE I.

OBJECT

1. The purpose for which this not for profit corporation is formed is to govern the administration and management of the condominium known as North of Nell Condominium (hereafter referred to as "condominium" or "North of Nell Condominium"), situate in the County of Pitkin, State of Colorado, upon the real property described as follows, to-wit:

Parcel No. 1: Lots A, B, C, E, F, G, H, and I, in Block 97, together with the West 8 feet of the Westerly one-half of South Hunter Street  
Lying East of and adjacent to lot I, Block 97 in the City and Townsite of Aspen;

Parcel No. 2: The North 10 feet of the East 15 feet of the Westerly one-half of South Hunter Street lying East of and adjacent to Lot I, Block 97, in the City and Townsite of Aspen.

Parcel No. 3: A non-exclusive right of way for ingress and egress over and across the Westerly one-half of vacated South Hunter Street lying Easterly and adjacent to Lot I, Block 97, except the portion thereof described above,

Which condominium is governed by the provisions of the Condominium Ownership Act, C.R.S. Chapter 118, Article 15 of the State of Colorado and established by the condominium Declaration for the North of Nell Condominium (hereinafter referred to as "the Declaration").

2. All present or future owners, tenants, occupants or other persons that might, at any time own, use or occupy the property (as defined in the Declaration), or any portion thereof in any manner, are subject to the provisions set forth in these By-laws. The acquisition or rental of any of the condominium units in the condominium, or the act of occupancy of any of the units, shall constitute an acceptance, ratification and agreement to comply with these By-Laws.

## ARTICLE II.

### MEMBERSHIP, VOTING, MAJORITY OF OWNERS, QUORUM, PROXIES

1. Membership: Each owner of a condominium unit shall be a member of this corporation, which membership shall terminate upon the sale or other disposition of such member's unit, at which time the new unit owner shall automatically become a member of the corporation. Such termination shall not relieve or release any such former member from any liability or obligation incurred under or in any way connected with the condominium or this corporation, during the period of such ownership and membership in this corporation. Furthermore such termination shall not impair any rights or remedies which the Board of Managers of the corporation or others may have against such former owner and member arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be issued by the corporation.
2. Voting: If any unit is owned by more than one person, the voting rights with respect to such unit shall be divided, but shall not be divided, but shall be exercised as if the unit owners consisted of only one person in accordance with the proxy or other designation made by the persons constituting such unit owner. The total number of votes of all members shall be 100, and each owner or group of owners shall be entitled to the number of votes equal to the total of the percentage of ownership in the common elements appurtenant to his or their unit as set forth in Exhibit "A" to the Declaration. In all elections for members of the Board of Managers, each member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected (subject to the provisions of Article IV, Section 1 hereof).
3. Majority of the Unit Owners: "Majority" or "majority of the unit owners" means the owners of more than 50% in the aggregate in interest of the undivided ownership of the general common elements in the condominium. Any specified percentage of the unit owners, whether majority or otherwise, for purposes of voting and for all purposes and wherever provided in these By-Laws, shall mean such percentage in the aggregate in interest of the undivided ownership of such general elements.
4. Quorum: Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of the unit owners as defined in Paragraph 3 of this Article shall constitute a quorum.

## ARTICLE III.

### ADMINISTRATION

1. Corporation Responsibilities: The owners of the units will constitute the members of this Corporation, who will have the responsibility of administering and managing the condominium through a Board of Managers.
2. Annual Meeting: The annual meeting of the members of the corporation shall be held at 2:00 o'clock in the afternoon on the third Tuesday in the Month of March each year, beginning with the year of incorporation or such other date as the Board of Managers may designate, for the purpose of electing Managers and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday, the meeting shall be held on the next succeeding business day. If the election of Managers shall not be held on the day designated herein for any annual meeting of members, or at any adjournment thereof, the Board of Managers may thereafter cause the election to be held at a special meeting of members.
3. Special Meetings: Special meetings of the members, for any purpose, unless otherwise prescribed by statute, may be called by the President or by the Board of Managers, and shall be called by the President at the request at any time of 33-1/3% of the unit owners.
4. Place of Meetings: The Board of Managers may designate any place in Pitkin or Denver counties, Colorado, as the place for any annual meeting or for any special meeting called by the Board of Managers. A waiver of notice signed by all members may designate any place, either within or outside the state of Colorado, as the place for such meeting. If no designation is made, or if a special meeting shall be called otherwise than by the Board, the place of meeting shall be in Aspen, Colorado.
5. Notice of Meetings: Written or printed notice stating the place, day and hour of the meeting, and, in case of a special meeting, the purposes for which the meeting is called, shall be delivered not less than five nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the officer or persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member, with postage thereon prepaid.
6. Quorum: If a quorum is not represented at a meeting, a majority of the unit owners represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally called. The owners present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough owners to leave less than quorum. If a quorum is present at such meeting shall be the act of the members unless the vote of a greater number is required by law, the Certificate of Incorporation, or by other provisions of these By-Laws or the Declaration.

7. Proxies: At all meetings of members, a member may vote by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the corporation before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.
8. Informal Action by Members: Any action required to be taken at a meeting of the Members, or any other action which may be taken at a meeting of the members, may be taken at a meeting of the members, may be taken without a meeting if a consent in writing, setting forth the action to taken, shall be signed by all of the members, and may be stated as such in any articles or document filed under the corporation act or otherwise.

#### ARTICLE IV.

##### BOARD OF MANAGERS

1. Number and Qualifications: The affairs of this corporation shall be governed by a Board of Managers composed of five (5) persons. At least two members of the Board of Managers shall at all times be elected by the owners of more than 50% in the aggregate in interest of the individual ownership of the general common elements owned by all of the owners of commercial units.
2. Powers and Duties: The Board of Managers shall have the powers and duties necessary for the administration of the affairs of the corporation, and for the operation and maintenance of a first-class condominium development. All of the powers and duties of the Association existing under the Declaration, the Colorado Condominium Ownership Act and these By-Laws, shall be exercised exclusively by the Board of Managers, its agents or employees, except for such acts, things or approvals as by law, these By-Laws, or the Declaration are directed to be done by the unit owners.
3. Other Powers and Duties: The powers and duties of the Board of Managers shall include, but shall not be limited to the following.
  - A. The administration and enforcement of the terms, divisions, easements, covenants, restrictions, obligations, limitations, conditions, uses and all other provisions set forth in the Declaration and the administration and enforcement of rules and regulations set forth in these By-Laws.
  - B. The establishment and enforcement of compliance with such rules and regulations as the Board of Managers may adopt or amend pursuant to the Declaration;
  - C. The acquisition, arrangement and payment for, as common expenses, water, waste removal, electricity, telephone and other necessary utility services for the general and limited common elements and such services for the general and limited common elements and such services to the units as are not separately metered or charged to the owners thereof;
  - D. The arrangement, acquisition and payment for, as common expenses, landscaping, gardening, snow removal, painting, tuckpointing, maintenance, decorating, repair and replacement of the general and limited common elements (except for such portions thereof as the respective unit owners are

required to paint, clean, decorate, replace, maintain or repair in accordance with the Declaration);

- E. The acquisition, arrangement and payment for such materials, supplies, furniture, labor, services, maintenance, repairs and structural alterations which the Board of Managers deems necessary or proper for the maintenance of the property as a first class condominium development or for the enforcement of any restrictions or provisions contained herein or in the Declaration.
- F. The acquisition, arrangement and payment for, as a common expense, of such policies of insurance as the Board of Managers is required or permitted to obtain in accordance with the terms and provisions of the Declaration:
- G. The payment, as a common expense, of any amount necessary to discharge any mechanic's lien or other encumbrance levied against the property or any part thereof which may in the opinion of the Board of Managers constitute a lien against the property or against the general common elements, rather than merely against the interests therein of particular unit owners. Where one or more unit owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Board of Managers by reason of said lien or liens shall be specially assessed to said unit owners and shall, until paid by such unit owners, constitute a lien on the interest of such unit owners in the property, which lien may be foreclosed in like manner as a lien for unpaid common expenses as provided in the Declarations;
- H. The maintenance and repair of any unit or any other portion of the property which a unit owner is obligated to maintain or repair under the terms hereof or under the terms of the Declaration, if such maintenance or repair is necessary, in the discretion of the Board of Managers to protect the general or limited common elements, or any other portion of the property, and the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board of Managers to said unit owner or owners; provided that the Board of Managers shall levy a special assessment against such unit for cost of said maintenance or repair and the amount of such special assessment shall constitute a lien on the interest of such unit owner or owners in the property, which lien may be foreclosed in like manner as a lien for unpaid common expenses as provided in the Declaration.
- I. The contracting for, and engagement of, the services of a manager or managing employee who may be any person, firm or corporation, upon such terms and compensation as the Board of Managers deems fit and to delegate to such manager or managing employee any of its duties, powers and functions.
- J. The fixing, determination, levying and collection of the assessments to be paid by each of the unit owners toward the common expenses of the condominium and, by majority vote of the Board to adjust, decrease or increase the amount of such assessments at any time, and the levying and collection of special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses or costs, or whenever such a special assessment is required or permitted under the terms of the Declaration or these By-Laws;

- K. The collection of delinquent assessments by suit, foreclosure or otherwise as provided in the Declaration and by these By-Laws;
  - L. The protection of the condominium from loss and damage by suit or otherwise;
  - M. The execution of contracts within the scope of their duties and powers;
  - N. The establishment of one or more bank accounts for all common funds and separate funds which are required or may be deemed advisable by the Board of Managers.
  - O. In general, the carrying on of the administration of this corporation and doing of all of things necessary and reasonable in order to carry out the communal aspect of condominium ownership and the terms of the By-Laws and the Declaration.
4. Election and Term of Office: Members of the Board of Managers shall serve for a term of one year, and until their successors are elected.
  5. Removal: Any member of the Board of Managers may be removed from office in the manner provided in the Colorado Nonprofit Corporation Act.
  6. Vacancies: Any Managers may resign at any time by giving written notice to the President or to the Secretary of the corporation. Such resignation shall take effect at any time specified therein, the acceptance of such resignation shall take effect at the time specified therein, but not retroactively; 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 Manager may be filled by the affirmative vote of a majority of the remaining Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any vacancy to be filled by reason of an increase in the number of Managers shall be filled by election at an annual meeting or at a special meeting of members called for the purpose.
  7. Regular Meetings: A regular meeting of the Board of Managers shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of members. The Board of Managers may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.
  8. Special Meetings: Special meetings of the Board of Managers may be called by or at the request of the President or any three Managers. The person or persons authorized to call special meetings of the Board of Managers may fix the place for holding any special meeting of the Board of Managers may fix the place for holding any special meeting of the Board of Managers called by them.
  9. Notice: Reasonable notice of any special meeting (which need not in any event exceed two days) shall be given by mail, telegram or telephone to each Manager at his last known business or residence address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such shall be deemed to be delivered when the telegram is delivered to the telegram company. Any Manager may waive notice of any meeting. The attendance of a Manager at a meeting shall constitute a waiver of notice of such meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Managers need be specified in the notice or waiver of notice of such meeting.
  10. Quorum: A majority of the Managers shall constitute a quorum for the transaction of business at any meeting of the Board of Managers, but if less than such majority is

present at a meeting, a majority of the Managers present may adjourn the meeting from time to time without further notice. The act of the majority of Managers present at the meeting at which a quorum is present shall be the act of the Board of Managers, unless a greater number is required by law, the Declaration or these By-Laws.

11. Presumption of Assent: A manager who is present at a meeting of the Board of Manager at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.
12. Informal Action by Managers: Any action required or permitted to be taken at a meeting of the Managers may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Managers entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Managers, and may be stated as such in any articles or documents filed under the corporation act, or otherwise.

#### ARTICLE V. OFFICERS AND AGENTS

1. General: The officers of the corporation shall be president, a vice president, a secretary, and a treasurer. The Board of Managers may appoint such other officers, assistant officers, committees and agents, as they may consider necessary, who shall be chosen in such manner and hold their offices for such terms as from time to time may be determined by the Board of Managers. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the By-Laws or by the Board of Managers, such officer, agent, or employee shall follow the orders and instructions of the president, who shall be the chief executive officer of the corporation unless otherwise provided by the Board of Managers.
2. Election and Term of Office: The officers of the corporation shall be elected or appointed by vote of the majority of the Board of Managers annually at the first meeting of the Board held after each annual meeting of the members, or as soon thereafter as conveniently may occur; until his successor shall have been duly elected or appointed and shall have qualified; or until his death; or until he shall resign; or until he shall have been removed in the manner hereinafter provided.
3. Removal: Any officer or agent may be removed by vote of the majority of the Board of Managers whenever in its judgment the best interest of the corporation will be served thereby, except as may be otherwise provided in any agreement or contract to which the Association is a party.
4. Vacancies: A vacancy in any office, however occurring, may be filled by the Board of Managers for the unexpired portion of the term.
5. Powers and Duties: The officers of the corporation shall have such powers and duties as usually pertain to their office, except as modified by the Board of Managers, and shall

also have such powers and duties as may from time to time be conferred upon them by the Board of Managers.

ARTICLE VI  
OBLIGATIONS OF UNIT OWNERS

1. Assessments: All unit owners shall be obligated to pay the assessments imposed by the Board of Managers to meet the common expenses of the condominium. The assessments shall be made as provided in the Declaration. A member shall be deemed in good standing and entitled to vote at any annual or special meeting of members, within the meaning of these By-Laws, if and only if he shall have fully paid all assessments made or levied against him and the condominium unit in which he owns an interest.
2. Declaration: Each member shall comply strictly with the provisions of the Declaration.
3. Rules and Regulations Regarding Parking: Subject to the provisions of the Declaration:
  - a. The parking spaces located in the basement level of the condominium building may be used by the unit owners and their tenants and invitees. However, the unit owners shall acquire no title or other rights of any nature in such parking spaces, and shall not have the right to assign, transfer or convey any space or spaces, which shall at all times remain part of the General Common Elements subject to the rules and regulations of the Association as herein set forth and as may from time to time be promulgated by the Board of Managers.
  - b. The aforesaid parking spaces are not provided, and shall not be used, as a space to store an automobile for an indefinite period of time. Therefore, if an automobile shall remain in a parking space for a period of five consecutive days without being driven for normal transportation purposes, the unit owner owning such automobile or the unit owner whose lessee or invitee owns such automobile shall be fined by the Association the sum of \$5.00 for each day following such five day period in which the automobile is not so driven. The fines shall become part of the monthly assessment of the unit owner and may be collected in the same manner as assessments for common expense as provided in the Declaration and these By-Laws.
4. Additional Rules and Regulations:
  - a. No storage sheds shall be erected inside or outside the condominium building and no storage boxes or trailers shall be permitted inside or outside the condominium building. The balconies adjoining any unit may not be used for storage purposes.
  - b. No unit owner, occupant or lessee of the condominium shall install electrical or telephone wiring or television antennae, machines, or air conditioning units on the exterior on the exterior of the condominium, nor shall installations be installed in such a way as to protrude through the walls or roof of the condominium except as authorized by the Board of Managers.
  - c. Garbage or trash shall be place only in the disposal installations provided for each purpose.
  - d. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred, or kept in any unit or in the general common elements. If any violation of the provisions of this regulation is not cured within three days after notification by the Board is mailed to the unit owner to cure such violation, the owner of the unit in



which such violation occurs shall be fined by the Association the sum of \$5.00 for each day following such three-day period. The fine shall become part of the monthly assessment of the unit owner and may be collected in the same manner as assessments for common expense as provided in the Declaration and these By-Laws.

## ARTICLE VII MORTGAGES AND DEEDS OF TRUST

An owner whose unit is encumbered by a mortgage or deed of trust shall promptly after the recording of such mortgage or deed of trust, give notice of such to the president of the corporation, together with the name and address of the mortgagee or beneficiary of such deed or trust. The corporation shall maintain such information in a permanent record.

## ARTICLE VIII MISCELLANEOUS

1. If any of the provisions of these By-Laws conflict with the provisions of the Condominium Ownership Act of the State of Colorado or the Declaration, the provisions of the Act or the Declaration shall apply and control.
2. This corporation is not organized for profit. No officer, member, or member of the Board of Managers shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the corporation be paid as salary or compensation to, or distributed to, or insure to the benefit of any member of the Board of Managers, provided, however, (1) that reasonable compensation may be paid to any member or Manager while acting as an agent or employee of the corporation for services rendered in effecting one or more of the purposes of the corporation, or pursuant to any contract or agreement to which the Association is a party, and (2) that any member of the Board of Managers may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the corporation.
3. The principal office for the transaction of business of this corporation shall be P.O.Box NN, Aspen, Colorado.
4. All Words and terms used herein which are also used in the Declaration shall have the same meaning as provided for such words and terms in the Declaration.
5. Each person who acts as Manager or officer of the corporation shall be indemnified by the corporation 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 his being or having been a Manager or officer of the corporation; 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 willful misconduct and except any sum paid for the corporation in settlement of any action, suit or proceeding based on gross negligence or willful misconduct in the performance of their duties. The right of indemnification provided herein shall insure to each Manager and officer, whether or not he is a Manager or officer at the time such costs and expenses are imposed or incurred, and in the event of his death shall extend to his legal representative.

ARTICLE IX  
AMENDMENTS

Except as hereinafter provided otherwise, these By-Laws may be modified or amended at any time by the vote of 66-2/3% of the unit owners at a meeting of members duly held for such purpose; provided, however, that (a) the provisions of this Article IX may be amended only by the vote of 100% of the unit owners with the written approval of all mortgagees and holders of any deed of trust having bona fide liens of record against any units; (b) no modification or amendment which affects the rights, privileges or obligations of Daly Construction, Inc. (the "Declarant") shall be effective without the prior written consent of the Declarant; and (c) no modification or amendment may be adopted at any time which conflicts or is inconsistent with any provisions of the Declaration or the Colorado Condominium Ownership Act.

Approved by the Board of Managers this \_\_\_\_\_ day of \_\_\_\_\_,

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