

Hillside of Petoskey  
Condominium II Association  
Building 3; Units 25-36

700 Hillside Drive  
Petoskey, Michigan 49770

**Condominium By-Laws**

# Hillside of Petoskey Condominium II Association

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## Hillside of Petoskey Condominium II Association (Building 3; Units 25-36)

### Condominium By-Laws

This Condominium By-Laws document for the **Hillside of Petoskey Condominium II Association** (Building 3; Units 25-36) replaces any preceding By-Laws (Dated January 14, 1982), Amendments 1-6 (Amendment 1: Dated July 18, 1983, Amendment 2: Dated July 31, 1985, Amendment 3: Dated September 21, 1989, Amendment 4: Dated January 12, 1990, Amendment 5: Dated January 12, 1990 and Amendment 6: Dated October 7, 2003), and other documents of the Hillside of Petoskey Condominium Association and replaces the Amended Nonprofit articles of incorporation as this is filed with the State of Michigan and Bylaws (Dated August 15, 2006) of the **Hillside of Petoskey Condominium II Association**.

**Hillside of Petoskey Condominium II Association** separated from the original Hillside of Petoskey Condominium Association (Buildings, 1 and 2; Units 1-24), on Sept 13, 2006. The separation is documented in Amendment 7 (Dated September 13, 2006) to the original By-Laws of their owners Association (established by the Master Deed and Condominium By-Laws, dated January 14, 1982, and recorded January 15, 1982, in Liber 317, Page 368, Emmet County Records) as amended.

These By-Laws are adopted in their entirety as the By-Laws of the **Hillside of Petoskey Condominium II Association**.

# Hillside of Petoskey Condominium II Association

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# Hillside of Petoskey Condominium II Association

## Article I: Association of Co-Owners

Description, membership and governance

### Section 1: Description

- A. **Hillside of Petoskey Condominium II Association** (Building 3; Units 25-36), is a residential Condominium Project located at 700 Hillside Drive, on Charlevoix Avenue, in the City of Petoskey, Emmet County, Michigan 49770. Hillside of Petoskey Condominium II Association contains a total of twelve (12) Condominium Units in one separate building consisting of three (3) floors.
- B. The legal description for **the Hillside of Petoskey Condominium II** project is detailed in The Master Deed of the original Hillside of Petoskey Condominium Project, Article II (Dated January 14, 1982), amended in the Bylaws Second Amendment, Article 2 (Dated January 19, 1982) and further amended in the Third Amendment, Article 3 (Dated September 21, 1989). It was clarified specifically for Building 3, Units 25-36, including detailed drawings, in the sixth Amendment (Dated October 7, 2003). See appendix B.
- C. The **Hillside of Petoskey Condominium II Association**, under the laws of the State of Michigan, is incorporated as a not-for-profit corporation. Each Co-owner automatically becomes a member of the Association upon purchasing a Condominium Unit in **Hillside of Petoskey Condominium II Association**.

### Section 2: Membership

Membership and voting in the Association shall be in accordance with the following provisions:

#### Members:

- A. Each Co-owner shall be a member of the Association and no other person or entity shall be entitled to membership.
- B. Membership in the Association will terminate when the Co-owner/member sells or conveys or otherwise disposes of all units owned by that member.

#### Membership fees:

- A. By majority vote of 7, members will establish the fee amount for the Association. The Board of Directors will establish a method to bill and collect these fees from the owners on a monthly basis.
- B. The share of a Co-owner in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as it pertains to his/her Unit in the Condominium.

#### Voting:

- A. No Co-owner shall be entitled to vote at any meeting of the Association until he/she has presented evidence of ownership of a Condominium Unit in the Association.
- B. The presence in person or by proxy of a majority of 7 members of the Co-owners qualified to vote shall constitute a quorum for holding a meeting, or voting except for voting on questions specifically required to have a greater quorum. The written vote of any person furnished at or prior to any meeting at which the person is not present in person or by proxy shall be counted in determining a quorum.

# Hillside of Petoskey Condominium II Association

## Section 3: Governance

Hillside of Petoskey Condominium Association II shall be administrated by an Association of Co-owners which shall be a non-profit corporation, hereafter called the "Association", organized under the applicable laws of the State of Michigan, and responsible for the management, maintenance, operation and administration of the Common Elements, easements, and affairs of the Condominium Project in accordance with these By-Laws ( ), future amendments to these By-Laws, The Amended Nonprofit Articles of Incorporation (dated Aug.15, 2006), the Association Restrictions, rules, regulations and procedures documents and minutes of the annual and special meetings.

### Membership Meetings and Board Meetings:

- A. There shall be a minimum of an annual summer meeting of the members of the Association.
- \*B. Special meetings may be conducted in lieu of, or in addition to, the annual meeting.
- C. Meetings will be conducted according to generally recognized parliamentary procedures, to the extent that those procedures are not in conflict with the Association documents or the laws of the State of Michigan.
- \*D. Board meetings may be requested by a Board Member or by two or more of the Association members.

### Board of Directors:

The affairs of the Association shall be governed by a Board of Directors, who are Association members.

#### A. Selection

- 1. The Board of Directors shall consist of a minimum of President, Secretary and Treasurer.
- 2. Directors will be elected at the annual membership meeting to hold office until the next annual meeting or until death, written resignation, or removal by a majority vote of members. Vacancies may be filled by the remaining directors or by a full vote of all the members.

#### B. Board Powers

The Board of Directors shall have all powers and duties necessary for the administration of the affairs of the Association and may do all acts as are not prohibited by the Condominium Documents or required thereby to be done by the Co-owners. Directors shall have power specifically for the following:

- 1. To manage and administer the affairs and maintenance of the condominium and the common elements thereof;
- 2. To levy and collect assessments from the members of the Association and to use the proceeds for the purposes of the association;
- 3. To carry insurance and collect, and allocate the proceeds;
- 4. To rebuild improvements after casualty;
- 5. To contract for and employ persons, firms, corporations or other agents to assist in the management, operation, maintenance and administration of the Condominium;
- 6. To acquire, maintain, improve, and to buy, manage, operate, sell, convey, assign, mortgage or lease any real or personal property (including any unit in the Condominium, easements, right-of-ways and licenses) on behalf of the Association in furtherance of any of the purposes of the Association;
- 7. To borrow money and issue evidences of indebtedness in furtherance of any and all of the purposes of the business of the Association, and to secure the same by mortgage, pledge, or other lien on property owned by the Association; provided, that any such action shall also be approved by affirmative vote of a majority or 7 of the members of the Association;
- 8. To make rules and regulations in accordance with the by-laws;
- 9. To enforce the Association documents;
- 10. To establish such committees as it deems necessary or desirable and to appoint persons thereto for the purpose of implementing the administration of the Condominium and to delegate to such

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committees any functions or responsibilities which are not by law or the Condominium Documents required to be performed by the Board.

## C. Association Records

1. The Association Board shall keep current copies of the Approved Master Deed, the By-laws, all Amendments, meeting minutes, Co-owner information sheets and other Condominium Documents.
2. Meeting minutes will be distributed to all Association members.
3. Documents for the Association will be available for examination, at reasonable hours for Co-owners, prospective purchasers and prospective mortgagees of Condominium Units in the Condominium.
4. A person shall be designated to keep books and records with a detailed account of the expenditures, receipts and operating expenses affecting the Condominium Project and its administration.
- \*5. All books and records shall be audited or reviewed by independent accountants annually. Such audits need to be certified.

## D. Notices

All written notices required to be given to members by any provision of these Bylaws shall state the authority pursuant to which they are issued (e.g., "by order or the president" or "by order of the Board of Directors"): Notice is served when it has been deposited in the U.S. mail or sent by Internet e-mail.

## E. Compensation

1. Officers may be compensated but only upon the affirmative vote of more than 7 of the Co-owners qualified to vote.
2. The Board of Directors or any Director shall be reimbursed for any expenses or liability which he shall incur, provided prior approval was given by the members of the Board.

## F. Limitation of Liability of Directors and others

1. A Director or officer of the Association will not be personally liable to the corporation or to its members for monetary damages for breach of fiduciary duty, except that a Director or officer will be liable for: (i) breach of the duty of loyalty of that director or officer to the Association and its members; (ii) acts or omissions not done in good faith or that involve intentional misconduct or a knowing violation of law; (iii) a violation of Section 551(1) of the Public Act of 1982; (iv) a transaction from which the director derived an improper personal benefit; or (v) an act or omission that is grossly negligent. If the Act is amended to authorize the elimination or further limitation of the liability of Directors or officer, then the liability of a Director or officer of the Association will be eliminated or limited to the fullest extent permitted by law.
2. The Association assumes liability for all acts or omissions of a Director, or officer if the Director or officer: (1) was acting or reasonably believed he or she was acting within the scope of his or her authority; and (2) was acting in good faith; and (3) the conduct did not amount to gross negligence or willful and wanton misconduct; and (4) the conduct was not an intentional tort; and (5) the conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the Insurance Code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.3135 of the Michigan Compiled Laws.

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## Article II: Financial & Assessments

Property taxes, expenses of the Association, assessments

### Section 1: Property Taxes

The Association shall be assessed as the person or entity in possession of any tangible personal property of the Condominium owned or possessed in common by the Co-owners, and personal property taxes based thereon shall be treated as expenses of administration.

### Section 2: Expenses of the Association

All costs incurred by the Association to satisfy any liability caused by or in connection with the Common Elements or the administration of the Condominium shall be expenses of the administration within the meaning of Section 54 of Public Act 59 of 1978, as amended; and all sums received as proceeds of any insurance policy carried by the Association to cover liabilities or losses caused by or connected with the Common Elements or the administration of the Condominium shall be receipts of the administration of the Association.

### Section 3: Assessments and Taxes:

#### A. Periodic Assessments

Periodic Assessments shall be determined in accordance with the following:

1. The Board of Directors of the Association shall establish an annual budget in advance for each fiscal year and such budget shall project all expenses of the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium project, including a reasonable allowance for contingencies and reserves
2. The Association shall maintain a reserve fund which, at a minimum, shall be equal to ten (10) percent of the Association's current annual budget on a non-cumulative basis. The reserve fund shall be used for major repairs and replacement of those common areas which must be replaced on a periodic basis. The Association should carefully analyze the project to determine if a greater amount should be set aside, or if additional reserve funds should be established for other purposes.
3. Upon adoption of an annual budget by the Board of Directors, copies of said budget shall be delivered to each Co-owner. The delivery of a copy of the budget to each Co-owner shall not affect the liability of any Co-owner for any existing or future assessments.
4. The assessment for said year shall be established based upon said budget.
5. All units shall be assessed equally regardless of the percentage of value of any unit.
6. Should the Board of Directors, at any time determine, in the sole discretion of the Board of Directors: a. that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Condominium, b. to provide the replacements of existing Common Elements, c. to provide additions to the Common Elements, not exceeding \$2,500.00 annually, or in the event of emergencies, the Board of Directors shall have the authority to increase the general assessment or to levy such additional assessment or assessments as it shall deem to be necessary.

#### B. Special assessments

Special assessments, in addition to those required in A above, may be made by the Board of Directors from time to time and approved by more than 7 of the Co-owners qualified to vote. The special assessments would be for other needs or requirements of the Association, including, but not limited to:

1. Assessments for capital improvements for additions with a cost not exceeding \$2,500.00 per year,
2. Assessments to purchase a unit upon foreclosure of the lien for assessments described in these By-laws.
3. Assessments to purchase a unit for use as a resident manager's apartment.

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4. Assessments for any other appropriate purpose not elsewhere herein described.

## **C. Property taxes and Special assessments**

Property taxes and Special assessments shall be assessed against the individual Condominium Unit identified as units of the Condominium subdivision plan and not on the total property of the project or any other part thereof.

1. Special assessments and property taxes in any year in which the property existed as an established Condominium Project on the tax date shall be assessed against the individual Condominium Unit. Condominium Units shall be described for such purposes by reference to the Condominium Unit number on the Condominium subdivision plan and the caption thereof together with the liber and page of the county records in which the approved Master Deed is recorded.
2. Any assessments for subsequent real property improvements to a specific Condominium Unit shall be assessed to that Condominium Unit description only.
3. For property tax and special assessment purposes, each Condominium Unit shall be treated as a separate single unit or real property and shall not be combined with any other unit or units and no assessments of any fraction of any unit or combination of any unit with other units or fractions thereof shall be made, nor shall any division or split of the assessment or taxes of any single Condominium Unit be made notwithstanding separate or common ownership thereof.

## **D. Developer responsibilities**

After the First Annual Meeting, Developer shall be responsible for payment of the full monthly Association maintenance assessment for all completed Units owned by it and shall also maintain, at its own expense, any incomplete Units owned by it. Developer will be responsible for its proportionate share of the following expenses: driveway and parking lot maintenance, including snow plowing; first year taxes and liability insurance; said proportionate share of the above expenses is to be based upon units owned by the Developer, whether the same are completed or not. 'Occupied Unit' shall mean a unit used as a residence. 'Completed unit' shall mean a unit with respect to which a certificate of occupancy has been issued by the local public authority.

## **E. Payment of assessments**

All assessments of the Co-owners to cover expenses of administration shall be levied as follows:

1. Apportioned among and paid by the Co-owners without increase or decrease for the existence of any rights to the use of Limited Common Elements appurtenant to a unit.
2. Annual Assessments as determined in accordance with Article II, Section 3.A above shall be payable by Co-owners in twelve (12) equal monthly installments, commencing with acceptance of a deed to a Unit or with acquisition of the simple title to a Condominium Unit or by any other means.
3. The payment of an assessment shall be in default if such assessments, or any part thereof, is not paid to the Association in full on or before the due date for such payment.
4. Assessments in default shall bear interest at the rate of seven (7) percent per annum until paid in full.
5. Each Co-owner (whether one or more persons) shall be, and remain, personally liable for the payment of all assessments pertinent to his Condominium Unit which may be levied while such Co-owner is the owner thereof.

## **F. No Co-owner exemption**

No Co-owner may exempt himself from liability for his contribution toward the expenses of administration by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Condominium Unit.

## **G. Collection of delinquent assessments**

The Association may enforce collection of delinquent assessments as follows:

1. Sums assessed to a Co-owner by the Association which are unpaid constitute a lien upon the unit or units in the project owned by the Co-owner at the time of the assessment before other liens except tax liens on the Condominium Unit in favor of any State or Federal taxing authority and sums unpaid on a



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first mortgage of record, except that past due assessments which are evidenced by a Notice of lien, recorded as set forth in Section 108 (3) of the Condominium Act have priority over a first mortgage recorded subsequent to the recording of the Notice of Lien. The lien upon each Condominium Unit owned by the Co-owner shall be in the amount assessed against the Condominium Unit, plus a proportionate share of the total of all other unpaid assessments attributable to Condominium Units no longer owned by the Co-owner but which became due while the Co-owner had title to the Condominium Units. The lien may be foreclosed by an action or by advertisement by the Association of Co-owners in the name of the Condominium Project on behalf of the other Co-owners.

2. A foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action. A foreclosure proceeding may not be commenced without recording and service of a Notice of Lien in accordance with the following:
  - a. The Association, acting on behalf of all the Co-owners; may bid in at the foreclosure sale and acquire, hold, lease, mortgage or convey the Condominium Unit.
  - b. An action to recover money judgments for unpaid assessments may be maintained without foreclosing or waiving the lien.
  - c. An action for money damages and foreclosure may be combined in one action.
  - d. A receiver may be appointed in an action for foreclosure of the assessment lien and may be empowered to take possession of the Condominium Unit, if not occupied by the Co-owner and to lease the Condominium Unit and collect and apply the rents therefrom.

### **Section 4: New owner liability**

Notwithstanding any other provisions of the Condominium Documents, the holder of any first mortgage covering any Condominium Unit in the project who comes into possession of the Condominium Unit pursuant to the remedies provided in the mortgage or by deed (or assignment) in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid assessments or charges against the mortgaged unit (except for claims for a pro rata share of such assessment or charges resulting from a prorated reallocation of such assessments or charges to all units including the mortgaged unit).

### **Section 5: Recovery of delinquent assessment at sale of unit**

- A. Upon the sale or conveyance of a Condominium Unit, all unpaid assessments against the Condominium Unit shall be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:
  1. Amounts due the state, or any subdivision thereof, or any municipality for taxes and special assessments due and unpaid on the Condominium Unit.
  2. Payments due under a first mortgage having priority thereto.
- B. A purchaser or grantee is entitled to a written statement from the Association setting forth the amount of unpaid assessments against the seller or grantor and the purchaser or grantee is not liable for, nor is the Condominium Unit conveyed or granted subject to a lien for any unpaid assessments against the seller or grantor in excess of those set forth in the written statement. Unless the purchaser or grantee requests the written statement from the Association as provided in the Act, at least five days before the sale, the purchaser or grantee shall be liable for any unpaid assessments against the Condominium Unit together with interest, costs, and attorney fees incurred in the collection thereof.

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## Article III: Condominium Components

Common & Limited Common Elements, Co-owner units, maintenance responsibilities

### Section 1: Common and Limited Common Elements

The Common Elements and the Limited Common Elements of the building 3 project are described below and are the Association responsibility for maintenance, decoration, repair and replacement are as follows:

- A. The General Common Elements are:
  1. The land, including driveways and sidewalks and parking spaces not designated as Limited Common Elements;
  2. Stairs and mechanical rooms in the building except those designated as limited Common Elements;
  3. The electrical wiring network throughout the project, including that located within the interior unit walls up to the point of connection with electrical fixtures within any unit;
  4. The natural gas lines throughout the project, including those contained within the interior unit walls up to location of the connection with the gas fixtures within any unit;
  5. The telephone wiring network throughout the project, including that located within the interior unit walls up to the point of connection with the outlet to service telephone equipment within any unit;
  6. The cable television wiring network throughout the project;
  7. The internet wiring network throughout the project;
  8. The plumbing works throughout the project, including that located within unit walls, up to the location where said plumbing is connected with fixtures within any unit;
  9. The water distribution system, sanitary sewer system and storm drainage system throughout the project;
  10. Foundations, supporting columns, unit perimeter walls (including windows and doors therein), roofs, ceilings, floor construction between unit levels, and chimneys;
  11. Such other elements of the project not herein designated as general or Limited Common Elements which are not enclosed within the boundaries of the unit.
- B. The Limited Common Elements are:
  1. Each individual balcony, patio, or garage in the project is restricted in use to the Co-owners of the Condominium Unit to which it respectively appertains. The garages are assigned to the individual Condominium Units as designated on purchase documents.
  2. Certain entry corridors and stairs within the building are limited in use to those units which have access from their units through said entry corridors and stairs to the general Common Elements for ingress and egress to the Units.

### Section 2: Individual Units

- A. The interior surfaces of the condominium Unit perimeter walls, windows, doors, ceilings and floors contained within a Unit shall be for the exclusive use of the co-owner of such Unit.
- B. No Co-owner shall use his Unit, the Limited Common Elements or the Common Elements in any manner inconsistent with the purposes of the Project or in any manner which will interfere with or impair the rights of any other Co-owner in the use and enjoyment of his Unit, Limited Common Elements or the Common Elements.
- C. A Condominium Unit is not separable from the Common Elements or Limited Common Elements appertaining to said Unit.

### Section 3: Maintenance Responsibilities

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- A. The respective responsibilities for the maintenance, decoration, repair, restoration and replacement of the Common Elements and Limited Common Elements are as follows:
  1. The cost of maintenance, repair, restoration, and replacement of all General Common Elements and, except as noted in Article III, Section 3.A.2 below, the Limited Common Elements shall be borne by the Association unless the maintenance, repair, restoration or replacement is necessitated by Co-owner fault, in which case the Co-owner at fault shall bear all such costs.
  2. The costs of decoration and maintenance (but not repair or replacement except in cases of Co-owner fault) of all surfaces referred to in Article III, Section 1.B.1 and Article III, Section 2 above, shall be borne by the Co-owner of each Unit to which such Limited Common Elements or Individual Unit pertains.
- B. A Co-owner shall not be exempt from assessment as provided in the Act by nonuse or waiver of the use of any of the Common Elements or by abandonment of his Condominium Unit.
- C. The costs of maintenance and repair of the general Common Elements and such Limited Common Elements which shall not be specifically assessed to a Condominium Unit shall be expenses of administration to be assessed in accordance with the By-Laws.
- D. If the Condominium Project is totally or partially damaged or destroyed or partially taken by eminent domain, the repair, reconstruction, or disposition of the property shall be as approved and provided by the By-Laws and the Master Deed of Hillside of Petoskey Condominium (Building 1 and 2)
- E. Public utilities furnishing services such as water, sewer, electricity, gas, cable television and telephone to the project shall have access to the Common Elements and to the Condominium Units as may be reasonable for the reconstruction, repair or maintenance of such services, and any costs incurred in opening and repairing any wall of the Project to reconstruct, repair or maintain such services shall be an expense of administration to be assessed in accordance with the By-Laws.

## Article IV: Insurance

Required and optional coverage, attorney-in-fact

### Section 1: Association required coverage

The Association shall carry fire, extended coverage for vandalism and malicious mischief, liability insurance, and workmen's compensation insurance, if applicable, for all of the Common Elements of the Project. Coverage should include ownership, use and maintenance of the Common Elements of the Project. All The insurance, other than title insurance, shall be carried and administered in accordance with the following provisions:

- A. All such insurance shall be purchased by the Association for the benefit of the Association, and the Co-owners and their mortgagees, as their interests may appear, and provision shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Co-owners.
- B. All Common Elements of the Condominium project shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. Such coverage shall also include interior walls within any Unit and the pipes, wires, conduits and ducts contained therein and shall further include all fixtures, equipment and trim within a Unit which were furnished with the Unit as standard items in accord with the plans and specifications thereof as are on file with the Association (or such replacements thereof as do not exceed the cost of such standard items).
- C. All premiums under insurance purchased by the Association pursuant to these By-laws shall be expenses of the Administration.
- D. Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account and distributed to the Association, and the Co-owners and their mortgagees as their

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interests may appear. Whenever repair or reconstruction of the Condominium shall be required as provided in Article V of these By-Laws, the proceeds of any insurance received by the Association as a result of any loss requiring repair or reconstruction shall be applied for such repair or reconstruction. In no event shall hazard insurance proceeds be used for any purpose other than for repair, replacement or reconstruction of the project unless all of the institutional holders of first mortgages on Units in the project have given their prior written approval.

## Section 2: Co-owner optional coverage

- A. Each Co-owner may obtain insurance coverage at his own expense for his Unit. It shall be each Co-owner's responsibility to obtain insurance coverage for his personal property located within his Unit or elsewhere on the Condominium and for his personal liability for occurrences within his Unit or upon Limited Common Elements appurtenant to his Unit, and also for alternative living expense in event of fire, and the Association shall have absolutely no responsibility for obtaining such coverage.
- B. Any improvements made by a Co-owner within his Unit shall be covered by insurance obtained by and at the expense of said Co-owner; provided that if the Association elects to include such improvements under its insurance coverage, any additional premium cost to the Association attributable thereto shall be assessed to and borne solely by said Co-owner and collected as a part of the assessments against said Co-owner, under Article II.

The Association and all Co-owners shall use their best efforts to see that all property and liability insurance carried by the Association or any Co-owner shall contain appropriate provisions whereby the insurer waives its right of subrogation as to any claims against any Co-owner or the Association.

## Section 3: Attorney-in-fact

Each Co-owner, of a Unit in the Condominium Project, shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of fire and extended coverage, vandalism and malicious mischief, liability insurance and workmen's compensation insurance, if applicable, pertinent to the Condominium Project, his Unit and the Common Elements appurtenant thereto with such insurer as may, from time to time, provide such insurance for the Condominium Project. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit premiums therefore, to collect proceeds and to distribute the same to the Association, the Co-owners and respective mortgagees, as their interests may appear (subject always to the Condominium Documents), to execute releases of liability and to execute all documents and to do all things on behalf of such Co-owner and the Condominium as shall be necessary or convenient to the accomplishment of the foregoing.

## Article V: Reconstruction or Repair

Decision, specifications, Co-owner & Association responsibility, eminent domain, FHLMC, First Mortgages

### Section 1: Reconstruction or Repair

#### A. Decision Making

If any part of the Condominium property shall be damaged, the determination of whether or not it shall be reconstructed or repaired shall be made in the following manner:

1. If the damaged property is a Common Element or a Unit, the property shall be rebuilt or repaired if any Unit in the Condominium is tenantable, unless it is determined by a unanimous vote of all of the Co-owners in

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the Condominium that the Condominium shall be terminated and each institutional holder of a first mortgage lien on any Unit in the Condominium has given its prior written approval of such termination.

2. If the Condominium is so damaged that no Unit is tenantable, and if each institutional holder of the first mortgage lien on any Unit in the Condominium has given its prior written approval of the termination of the Condominium, the damaged property shall not be rebuilt and the Condominium shall be terminated, unless seventy-five (75%) percent or more of the Co-owners agree to reconstruction by vote or in writing within ninety (90) days after the destruction.

### B. Reconstruction specifications

Any such reconstruction or repair shall be substantially in accordance with the Master Deed and the plans and specifications for the project of the Hillside of Petoskey Condominium Association (Building 1 and 2), and shall repair to a condition as comparable as possible to the condition existing prior to the damage unless the Co-owners shall unanimously decide otherwise.

### C. Co-owner responsibility

If the damage is only to a part of a unit which is the responsibility of a Co-owner to maintain and repair, it shall be the responsibility of the Co-owner to repair such damage in accordance with Section 4 hereof. In all other cases, the responsibility for reconstruction and repair shall be that of the Association.

### D. Shared responsibilities (Association & Co-owner)

1. Each Co-owner shall be responsible for the reconstruction, repair and maintenance of the interior of his Unit, including, but not limited to, floor coverings, wall coverings, window shades, draperies, interior walls (but not any Common Element therein), interior trim, furniture, light fixtures and all appliances, whether free-standing or built-in.
2. In the event damage to interior walls within a Co-owner's unit or to pipes, wires, conduits, ducts or other common elements therein is covered by insurance held by the Association, then the reconstruction or repair shall be the responsibility of the Association in accordance with Section 5.
3. If any other interior portion of a Unit is covered by insurance held by the Association for the benefit of the Co-owner, the Co-owner shall be entitled to receive the proceeds of insurance relative thereto and if there is a mortgagee endorsement, the proceeds shall be payable to the Co-owner and the mortgagee jointly.
4. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the Association shall promptly notify each institutional holder of a first mortgage lien on any of the Units in the Condominium.

### E. Association responsibilities

1. The Association shall be responsible for the reconstruction, repair and maintenance of the Common Elements and any incidental damage to a Unit caused by the Common Elements or the reconstruction, repair or maintenance thereof.
2. Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance, repair and reconstruction, the Association shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that existing before the damage.
3. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair required to be performed by the Association, or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Co-owners for the cost of reconstruction or repair of the damaged property in sufficient amounts to provide funds to pay the estimated or actual cost of repair.

# Hillside of Petoskey Condominium II Association

## Section 2: Taking by eminent domain

Section 133 of the Act and the following provisions shall control upon any taking by eminent domain:

- A. In the event of any taking of an entire Unit by eminent domain, the award for the taking shall be paid to the owner of the Unit and the mortgagee, in proportion to their respective interest in the Condominium Project. After acceptance of an award by the owner and his mortgagee, they shall be divested of all interest in the Condominium Project. In the event that any condemnation award shall become payable to any Co-owner whose Unit is not wholly taken by eminent domain, then the award shall be paid by the condemning authority to the Co-owner and his mortgagee, in proportion to their respective interests.
- B. If there is any taking of any portion of the Condominium other than any Unit, the condemnation proceeds relative to the taking shall be paid to the Co-owners and their mortgagees in proportion to their respective interests in the Common Elements and the affirmative vote of more than fifty (50%) percent of the Co-owners shall determine whether to rebuild, repair or replace the portion taken or to take such other action as they deem appropriate.
- C. In the event the Condominium Project continues after taking by eminent domain, then the remaining portion of the Condominium Project shall be re-surveyed and the Master Deed of the Hillside of Petoskey Condominium Project shall be amended accordingly. If any Unit shall have been taken, then Article V of the Master Deed shall also be amended to reflect such taking and to proportionately readjust the percentages of value of the remaining Co-owners based upon the continuing value of the Condominium of 100%. Such amendment may be effected by an officer of the Association duly authorized by the Board of Directors without the necessity of execution or specific approval by any Co-owners, but only with the prior written approval of all holders of first mortgage liens on the individual Units in the Project.
- D. In the event any Unit in the Condominium, or any portion thereof, or the Common Elements or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Association promptly shall so notify each institutional holder of the first mortgage lien on any of the Units in the Condominium.

## Section 3: FHLMC notice

In the event any mortgage in the condominium is held by the Federal Home Loan Mortgage Corporation (FHLMC) then the Association shall give FHLMC written notice, at such address as it may, from time to time direct, of any loss to or taking of the Common Elements of the Condominium if the loss or taking exceeds \$10,000 in amount.

## Section 4: Rights of first mortgagees

Nothing contained in the Condominium Documents shall be construed to give a Condominium Unit owner, or any other party, priority over any rights of first mortgagees of Condominium Units pursuant to their mortgages in the case of a distribution to Condominium Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or Common Elements.

## Article VI: Restrictions

### Restrictions, rules and procedures

#### Section 1: Restrictions, rules and procedures

In order to provide an environment conducive to pleasant living at Hillside of Petoskey Condominium II Association certain restrictions are in effect. Restrictions, rules and procedures are developed by the Board of Directors and approved by more than fifty percent (the majority) of the Co-owners qualified to vote. These restrictions and rules contain certain limitations upon the activities of the Co-owners and renters. The

# Hillside of Petoskey Condominium II Association

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restrictions, rules and procedures are detailed in the document titled 'Hillside of Petoskey Condominium II Association : Restrictions, Rules, Procedures and General Information'.

## Section 2: Non-compliance

Co-Owners who do not abide by the Association restrictions, rules and procedures are subject to notification by the Board, fines, liens and other disciplinary action.

## Section 3: Amended and new regulations

- A. Reasonable regulations consistent with the Act and these By-laws concerning the use of the Common Elements may be made and amended from time to time by any Board of Directors of the Association.
- B. Copies of all such regulations and amendments thereto shall be furnished to all Co-owners and shall become effective thirty (30) days after mailing or delivery thereof to the designated voting representative of each Co-owner.
- C. Any such regulation or amendment may be revoked at any time by the affirmative vote of more than fifty (50) percent of all Co-owners in number and in value.

## Article VII: Maintenance of Community Interests

In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the Condominium Units, no Co-owner may dispose of a Unit or any interest therein by sale or lease without written approval of the Association, which approval shall be obtained in the following manner:

### Section 1: Sale or lease of Units

- A. A Co-owner intending to make a sale or lease of a Unit, or any interest therein, shall give written notice of the intention to the Association at its registered office.
  1. The Co-owner shall furnish the name and address of the intended purchaser or lessee and such other information as the Association shall reasonably require.
  2. At the time of giving such notice, the Co-owner shall also furnish the Association copies of all instruments setting forth the terms and conditions of the proposed transaction.
  3. Giving the notice shall constitute a warranty and a representation by the Co-owner to the Association and to any purchaser or lessee produced by the Association that the Co-owner believes the proposed sale or lease to be in good faith and in compliance with reasonable commercial and business practices.
  4. The selling or leasing Co-owner shall be responsible to the Association for any damages suffered by it in exercise of its rights hereunder and, in the event any proposed sale is not negotiated and conducted in good faith, such damages to include (but not limited to) the difference between the price or rent paid by the Association for the Unit and the fair market or rental value thereof.
- B. Within twenty-one (21) days after receipt of such notice of intention to sell or lease, the Association shall either approve the transaction or furnish a purchaser or lessee satisfactory to it and give notice thereof to the selling or leasing Co-owner who will immediately execute a contract of sale or lease upon terms as favorable to the seller or lessor as the terms furnished with the notice.

During the twenty-one (21) day period, the Association shall have the right to show the Unit to prospective purchasers and lessees.

# Hillside of Petoskey Condominium II Association

A purchaser or lessee furnished by the Association may have not less than thirty (30) days subsequent to the date of his approval by the Association within which to close the transaction.

The seller or lessor shall be bound to consummate the transaction with the purchaser or lessee as may be approved and furnished by the Association. In case of sale, the approval of the Association shall be in recordable form, signed by any authorized officer of the Association, and shall be delivered to the purchaser. Failure of the Association to either approve the sale or lease or to furnish an appropriate substitute purchaser or lessee within the twenty-one (21) day period for any reason whatsoever shall be deemed to constitute approval, following which the Association shall, nevertheless, prepare and deliver written approval, and in the event of sale, in recordable form.

- C. In the event a sale or lease transaction is consummated between a Co-owner and any proposed purchaser or lessee upon any basis other than as disclosed to the Association, the Association shall then have the same rights to disapprove the transaction and to furnish a purchaser or lessee satisfactory to it as outlined immediately above in subsections A and B of this Article VII and such rights to disapprove and furnish a purchaser shall expire twenty-one (21) days after the directors of the Association receive knowledge at a Directors' meeting of the actual terms of the transaction or one (1) year after consummation of the original transaction, whichever occurs first.
- D. This Section shall not apply to a public or private sale held pursuant to foreclosure of a first mortgage on any Unit in the Project; nor shall any unit in the project which obtained title to the unit covered by such mortgage pursuant to the remedies provided in the mortgage, foreclosure of the mortgage or a deed ( or assignment) in lieu of foreclosure.
- E. Each prospective purchaser should review the use restrictions of the Association in their entirety to determine if their operation will interfere with their prospective use of the Condominium Project.

## Section 2: Mortgages Record and Notification Use

Any Co-owner who mortgages his Unit shall notify the Association of the name and address of the mortgagee, and the Association shall maintain such information. The Association may, at the written request of a mortgagee of any such Condominium Unit, report any unpaid assessments due from the Co-owner of such Condominium Unit. The Association shall give to the holder of any first mortgage covering any Unit in the Project written notification of any default in the performance of the obligations of the Co-owner of such Condominium Unit that is not cured within sixty (60) days.

## Section 3: Insurance notification

The Association shall notify each mortgagee of the name of each company insuring the Condominium against fire, perils covered by extended coverage, and vandalism and malicious mischief and the amounts of such coverage.

## Section 4: Amendments

Amendments to these By-laws may be proposed by the Board of Directors of the Association acting upon the vote of the members or by instrument in writing signed by them. The Condominium Documents may be amended for a proper purpose, even if the amendment will materially alter or change the rights of the Co-owners, mortgagees, or other interested parties. Amendments can occur with the following conditions:

- A. Upon any such amendment being proposed, a meeting for consideration of the same shall be called in accordance with the provisions of the Association By-laws.
- B. These By-laws may be amended by the Association at any regular meeting or a special meeting called for such a purpose.



# Hillside of Petoskey Condominium II Association

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- C. An amendment must have the consent of seventy-five percent (75%) or nine (9) of the unit Co-owners.
- D. Each Unit will be allowed one vote. The presence in person, by proxy or by written vote furnished by proxy to the Board shall constitute a vote.
- E. The Co-owners join the Amendment by signing a consent statement, attached to the amendment.
- F. A Co-owner's Condominium Unit dimensions or Limited Common Elements or his percentage of value may not be modified without his consent.
- G. Co-owners of record shall be notified of proposed amendments prior to the approval vote.
- H. A copy of each amendment to the By-Laws shall be furnished to every member of the Association after adoption; provided, however, that any amendment to these By-laws that is adopted in accordance with this Article shall be binding upon all persons who have an interest in the project irrespective of whether such person actually receive a copy of the amendment.
- I. A person causing or requesting an amendment to the Condominium Documents shall be responsible for costs and expenses for the amendment except for amendments based upon a vote of a prescribed majority of Co-owners or based upon the advisory committee's decision, the costs of which are expenses of administration.

## Section 5: Termination of project

- A termination agreement shall be executed by all Co-owners and evidenced of record.
- A. The Condominium Project shall be terminated only by the agreement of ninety percent (90%) or eleven (11) of all Co-owners.
  - B. Each Unit will be allowed one vote
  - C. Upon recording an instrument terminating the Condominium Project the property constituting the Condominium Project shall be owned by the Co-owners as tenants in common in proportion to their respective undivided interests in the Common Elements immediately before recording. As long as the tenancy in common lasts, each Co-owner or heirs, successors, or assigns thereof shall have an exclusive right of occupancy of that portion of the property which formerly constituted the Condominium Unit.
  - D. Upon recording an instrument terminating the Condominium Project, any rights the Co-owners may have to the assets of the association of Co-owners shall be in proportion to their respective undivided interests in the Common Elements immediately before recording, except that common profits shall be distributed in accordance with the Condominium Documents and the Act.

## Section 6: Compliance

- A. The Association and all present or future Co-owners, tenants, future tenants, or any other persons acquiring an interest in or using the facilities of the Project in any manner are subject to and shall comply with the By-laws and other Condominium Documents.
- B. The Association and all present or future Co-owners, tenants, future tenants, or any other persons acquiring and interest in or using the facilities of the Project in any manner are subject to and shall comply with the Act, as amended, and the mere acquisition, occupancy or rental of any Unit or an interest therein or the utilization of or entry upon the Condominium Premises shall signify that the Condominium Documents are accepted and ratified.
- C. In the event the Condominium Documents conflict with the provisions of the Statute, the Statute shall govern.

## Article VIII Settlement of Disputes and Claims

# Hillside of Petoskey Condominium II Association

## Section 1: Agreement to Arbitrate

- A. Disputes, claims, or grievances arising out of or relating to the interpretation or the application of the Condominium Documents, or any disputes, claims or grievances arising among or between Co-owners and the Association shall, upon the election and written consent of the parties to any such disputes, claims or grievances and written notice to the Association, be submitted to arbitration and the parties thereto shall accept the arbitrator's decision as final and binding.
- B. The Commercial Arbitration Rules of the American Arbitration Association as amended and in effect from time to time hereafter shall be applicable to any such arbitration.

## Section 2: Ability to petition a court

- A. No Co-owner or the Association shall be precluded from petitioning any proper court to resolve any such disputes, claims or grievances.
- B. Election by Co-owners or the Association to submit any such dispute, claim, or grievance to arbitration shall preclude such parties from litigating such dispute, claim or grievance in a court

## Section 3: Association rights/responsibilities

Actions on behalf of and against the Co-owners shall be brought in the name of the Association. The Association may assert, defend or settle claims on behalf of all Co-owners in connection with the Common Elements of the Condominium Unit Project.

## Section 4: Default of a Co-owner

Any default by a Co-owner shall entitle the Association or another Co-owner or Co-owners to the following relief:

- A. Failure to comply with any of the terms or provisions of the Condominium Documents shall be grounds for relief, which may include without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien (if default in payment of Assessments) or any combination thereof, and such relief may be sought by the Association, or, if appropriate, by an aggrieved Co-owner or Co-owners.
- B. In any proceedings arising because of an alleged default by any Co-owner, the Association, if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees, (not limited to statutory fees) as may be determined by the Court, but in no event shall any Co-owner be entitled to recover such attorney's fees.
- C. The violation of any of the provisions of the Condominium Documents shall also give the Association or its duly authorized agents the rights set forth above, the right to enter upon the Common Elements, limited or general, or into any Unit, where reasonably necessary, and summarily remove and abate, at the expense of the Co-owner in violation, any structure, thing or condition existing or maintained contrary to the provisions of the Condominium Documents.

## Section 5: Failure to enforce rights or rules

The failure of the Association or of any Co-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 of any such Co-owner to enforce such right, provisions, covenant or condition in the future.

## Section 6: Cumulative remedies

# Hillside of Petoskey Condominium II Association

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All rights, remedies and privileges granted to the Association or any Co-owner or Co-owners pursuant to any terms, provisions, covenants or conditions of the aforesaid Condominium Documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

## **Section 7: Action to compel enforcement**

A Co-owner may maintain an action against the Association and its officers and directors to compel these persons to enforce the terms and provisions of the Condominium Documents. A Co-owner may maintain an action against any other Co-owner for injunctive relief or for damages or any combination thereof for non-compliance with the terms and provisions of the Condominium documents or the Condominium Act.

## **Section 8: Severability**

In the event that any of the terms, provisions, or covenants of these By-laws or the Condominium Documents are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions or covenants of such documents or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

## **Article IX: Easements**

### **Easement for Maintenance of Encroachments**

In the event any portion of a Condominium Unit or Common Element encroaches upon another Condominium Unit or Common Element due to shifting, settling or moving of a building, or due to survey errors, or errors in construction, reconstruction or repair, reciprocal easements shall exist for the maintenance of such encroachment for so long as such encroachment exists, and for the maintenance thereof after rebuilding in the event of any destruction. There shall be easements to, through and over those portions of the land, structures, buildings, improvements and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall which supports a Common Element.

## **Article X: Developers Rights**

So long as the Developer owns one or more Condominium Units in the project, the Developer shall be subject to the provisions of the Condominium Documents. Further, the Developer hereby retains the right to rent Units owned by the Developer until such units are sold. Provided, however, the Developer shall disclose that fact in writing at least twenty one (21) days before renting the Condominium Unit, to the Association and shall supply a copy of the rental agreement for review by the Association for compliance with the Condominium Documents. Any tenant or non Co-owner occupants shall comply with all of the conditions of the Condominium Documents and all leases and rental agreements shall so state. Developer shall be subject to all of the restrictions regarding the rental or leasing of a Condominium Unit as set forth in these By-laws.

# Hillside of Petoskey Condominium II Association

## Appendix A: Definitions

The terms as defined below are used in the Association By-laws, Rules and Regulations. They may also be used in various other instruments such as, deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of or transfer of, interests in Hillside of Petoskey Condominium II Association. Wherever used in such documents or any other pertinent instruments, the terms shall be defined as follows:

- a. The Act or Condominium Act      The Michigan Condominium Act, being Act 59 of the Public Acts of 1978 as amended by Act 283 of the Public Acts of 1980.
- b. Association      The non-profit corporation organized under Michigan Law of which all Co-owners shall be members. The corporation shall administer, operate, manage and maintain the Condominium. Any action required of or permitted by the Association shall be exercisable by its Board of Directors unless specifically reserved to its members by the Condominium Documents or the laws of the State of Michigan.
- c. Condominium By-Laws      Sets forth the substantive rights and obligations of the Co-owners and required by Section 8 of the Act to be recorded as part of the Master Deed.
- d. Association By-Laws      The corporate By-Laws of Hillside of Petoskey Condominium II Owners Association, the Michigan non-profit corporation organized to manage, maintain and administer the Hillside of Petoskey Condominium II.
- e. Common Elements      The portions of the Condominium Project other than the Condominium Units.
- f. Condominium Unit or Unit      The enclosed space constituting a single complete residential unit in Hillside of Petoskey Condominium II as such space may be described in the By-Laws, the Master Deed and any amendments thereto and shall have the same meaning as the term 'Condominium Unit' as defined in the Act.
- g. Condominium Documents      Means and includes the legal papers, By-Laws, records of owner meetings, Condominium hand-book, rules and regulations pertaining to the Hillside of Petoskey Condominium Building 3 Project.
- h. Condominium Project, or Condominium      Hillside of Petoskey Condominium II, Building 3 as an approved Condominium Project established in conformity with the provisions of the Act and described in Amendment 6 of the Master Deed of the Hillside of Petoskey Condominium Project.
- i. Condominium Subdivision Plan      Exhibit B of the Master Deed of the Hillside of Petoskey Condominium Project.
- j. Co-owner      A person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns one or more Condominium Units in the Condominium Project. The term 'Owner', wherever used, shall be synonymous with the term 'Co-owner'.
- k. Condominium Premises      Includes the land and the buildings, all improvements and structures thereof, and all easements, rights and appurtenances belonging to Hillside of Petoskey Condominium II as described in the legal documents.

# Hillside of Petoskey Condominium II Association

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- l. Developer  
For Buildings 1 and 2: Hillside Associates, a Michigan co-partnership, which made and executed the Master Deed. For Building 3: The successor Developer, Ewing Investments, LP, a Texas limited partnership, of 12720 Hillcrest, Ste. 1030, Dallas, TX 75230.
- m. Garage  
A barn or indoor area for parking or storing motor vehicles.
- m. Gender and singular/plural  
Reference made to one gender refers to any and all genders; and singular also includes the plural where the same would be appropriate
- n. Limited Common Elements  
The portions of the Condominium Project other than the Common Elements used primarily by the Co-owner(s) of one or several units, but not necessarily used by all units (ex. Balconies or hallways).
- o. Maintenance  
The process of preserving something. The process of keeping something in good condition.
- P. Master deed  
The Master Deed of the original developer of the Hillside of Petoskey Condominium Project dated January 14, 1982 and recorded January 15, 1982, in Liber 317, Page 368, Emmet County Records.
- q. Member  
See J.-Co-owner
- r. Owner  
See J.-Co-owner
- s. Project  
See H.-Condominium Project
- t. Restrictions  
A limiting condition or measure, esp. a legal one. The limitations or control of someone or something, or the state of being limited or restricted.
- u. Severability  
A provision in a contract which states that if parts of the contract are held to be illegal or otherwise unenforceable, the remainder of the contract should still apply.
- v. Unit  
See F.-Condominium Unit

# Hillside of Petoskey Condominium II Association

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## Appendix B: Pages referenced in original documents

Attached are selected pages, referenced in the above By-Laws, that are contained in the Hillside of Petoskey Condominium Association documents. These pages explain details about or provide information about the Hillside of Petoskey Condominium II Association.

See attached pages:

Description of property-Third Amendment to the Master Deed  
Survey Plan for Buildings 1-3 (4 pages)- Exhibit B to the amended Master Deed  
    Location details  
    Survey plan  
    Site plan  
    Utility Plan  
Percentage of value- Second amendment to the Master Deed

Hillside Condominium's Building #3- Sixth Amendment to the Master Deed  
    Engineering drawings  
    Pages 048-65