

**FIRST AMENDED AND RESTATED BYLAWS
OF
GRAND VALLEY ESTATES HOMEOWNERS ASSOCIATION, INC.**

ADOPTED DECEMBER __, 2007

TABLE OF CONTENTS

ARTICLE 1. INTRODUCTION AND PURPOSES	1
1.1. Introduction.	1
1.2. Definitions; Interpretation.	1
ARTICLE 2. MEMBERS	1
2.1. Membership.	1
2.2. Members' Role in Governance of the Association.	1
2.3. Classes of Membership.	2
2.4. Member Votes; Allocated Interest.	2
2.5. Voting by Co-Owners.	2
2.6. Voting by a Member that is an Entity.	2
2.7. Suspension of Members' Voting Rights.	2
2.8. Manner of Voting.	2
2.9. Members List.	2
2.10. Record Date.	3
2.11. Members Notice.	3
2.12. Waiver of Notice.	3
2.13. Accepting or Rejecting Votes.	3
ARTICLE 3. MEMBERS MEETINGS	4
3.1. Annual Members Meetings.	4
3.2. Special Members Meetings.	4
3.3. Action by the Members.	4
3.4. Quorum.	4
3.5. Members Notice of Meetings.	4
3.6. Member's Presence at Meeting as Waiver of Notice.	4
3.7. Members' Proxies.	4
3.8. Voting Procedures/Secret Balloting.	5
ARTICLE 4. VOTING AND OTHER ACTION BY MEMBERS IN LIEU OF A MEETING.....	5
ARTICLE 5. BOARD OF DIRECTORS	6
5.1. Governance of the Association.	6
5.2. Number of Directors.	6
5.3. Term of Office.	6
5.4. Qualifications for Directors.	6
5.5. Election of Directors.	7
5.6. Resignation of Directors.	7

5.7. Removal of Directors.....	7
5.8. Vacancies.....	7
5.9. Compensation.....	7
5.10. Directors Notices.....	8
5.11. Waiver of Notice.....	8
5.12. Meetings of Directors.....	8
5.13. Delegation by the Board of Its Authority and Duties.....	10
5.14. Delegation of Financial or Monetary Responsibilities; Fidelity Bond.....	10
ARTICLE 6. OFFICERS AND THEIR DUTIES	10
6.1. Election and Removal of Officers; Vacancies.....	10
6.2. Enumeration of Offices.....	10
6.3. Term of Officers.....	10
6.4. Resignation and Removal.....	11
6.5. Vacancies.....	11
6.6. Duties.....	11
6.7. Responsibility for Preparing, Signing and Recording Amendments to Declaration.....	11
6.8. Delegation.....	11
ARTICLE 7. COMMITTEES.....	11
7.1. Designated Committees.....	11
7.2. Open Committee Meetings.....	11
ARTICLE 8. LIABILITY OF DIRECTORS OFFICERS, COMMITTEE MEMBERS AND EMPLOYEES OF THE ASSOCIATION; INDEMNIFICATION	12
8.1. Liability of Directors and Officers.....	12
8.2. Indemnification of Directors and Officers.....	12
8.3. Obligation to Indemnify.....	12
8.4. Determination Required.....	12
8.5. Payment in Advance of Final Disposition.....	13
8.6. No Limitation of Rights.....	13
8.7. Directors and Officers Insurance.....	13
ARTICLE 9. CONFLICTS OF INTEREST POLICY FOR DIRECTORS.....	13
9.1. Purpose.....	13
9.2. Definitions.....	13
9.3. Basic Rule for Conflicts of Interest.....	15
9.4. Basic Rule for Disclosure or Use of Proprietary Information by Directors.....	15
9.5. Self-Disclosure.....	15

9.6. Disclosure by One Director of an Interest on the Part of Another Director.....	15
9.7. Determining Whether a Conflict of Interest Exists.....	15
9.8. Confidentiality of Disclosed Business Interests.....	16
9.9. Violations of the Conflicts of Interest Policy.....	16
9.10. Periodic Compliance Reviews.....	16
ARTICLE 10. RULES	16
10.1. Adoption of Rules.....	16
10.2. Enforcement of Rules.....	16
ARTICLE 11. ENFORCEMENT.....	17
11.1. Defaults by Members in Performing Their Obligations under this Declaration.....	17
11.2. First Mortgagee's Right to Cure.....	17
11.3. Association's Right to Enter onto a Lot.....	17
11.4. Enforcement Actions.....	17
11.5. Damage or Destruction of Common Elements by a Member.....	18
11.6. Actions by or against Other Persons under the Governing Documents.....	18
ARTICLE 12. PROCEDURAL GUIDELINES TO ENSURE FAIRNESS IN ENFORCEMENT ACTIONS. 19	
12.1. Purpose.....	19
12.2. Definitions.....	19
12.3. The Panel.....	20
12.4. Enforcement Notice.....	20
12.5. Pre-Hearing Matters.....	20
12.6. Contestant's Failure to Appear at Hearing.....	21
12.7. Hearing Procedures.....	21
ARTICLE 13. MANDATORY DISPUTE RESOLUTION.....	23
13.1. Purpose.....	23
13.2. Claims.....	23
13.3. Exclusions.....	24
13.4. Bringing a Claim; Notice.....	24
13.5. Counterclaims.....	25
13.6. Right to Inspect.....	25
13.7. Good Faith Negotiations.....	25
13.8. Mediation.....	25
13.9. Arbitration.....	26
13.10. Specific Performance.....	26
13.11. Utilization of Funds Resulting from the Cause of Action.....	26

13.12. Exclusive Remedy.....	26
13.13. Effect on Other Laws.	26
ARTICLE 14. BOOKS AND RECORDS; FINANCIAL STATEMENTS	26
14.1. Presumption of Accuracy of Minutes.	26
14.2. Association Records.	27
14.3. Association Records to Be Kept at Association’s Principal Office.....	27
14.4. Permanent Association Records.....	27
14.5. Members List.....	27
14.6. Association Records Unconditionally Available to Members.....	27
14.7. Association Records Conditionally Available to Members and First Mortgagees.	28
14.8. Association’s Financial Statements.	29
14.9. Review of Association’s Financial Statements.	29
14.10. Audit of Association’s Financial Statements.	29
14.11. Members’ Right to Copies of Reviews and Audits.....	29
ARTICLE 15. AMENDMENTS.....	29
15.1. Amendment of Articles by Board without Member Approval.	29
15.2. Amendment of Articles by Board and Members.	29
15.3. Restatement of Articles. by the Board.	30
15.4. Bylaw Amendments.	30
15.5. Bylaw Changing Quorum or Voting Requirement for Directors.	30
ARTICLE 16. MISCELLANEOUS	31
16.1. Notices.	31
16.2. Fiscal Year.	31
16.3. Office.....	31
16.4. Successors and Assigns.....	31
16.5. Rules of Construction.....	31
16.6. Business Days.	32
16.7. Governing Law.	32
16.8. Severability.....	32
16.9. Unavoidable Circumstances.	32
16.10. Nonwaiver.	32
16.11. Legal Significance of Association’s Approval or Consent.....	32
16.12. No Restrictions on Freedom of Speech.....	32
ARTICLE 17. MATTERS RELATING TO DECLARANT.....	33
17.1. Special Declarant Rights.....	33

17.2. Declarant's Turn-Over of Governance and Control of Association to the
Members. 34

**FIRST AMENDED AND RESTATED BYLAWS
OF
GRAND VALLEY ESTATES HOMEOWNERS ASSOCIATION, INC.**

Article 1. Introduction and Purposes

1.1. Introduction. These are the First Amended and Restated Bylaws (“**Bylaws**”) of the Grand Valley Estates Homeowners Association, Inc., a Colorado non-profit corporation (the “**Association**”), adopted under the Colorado Revised Nonprofit Corporation Act, C.R.S. Sec 7-121-101 et. seq. (as amended from time to time, the “**RNCA**”); the Colorado Common Interest Ownership Act, C.R.S. Sec 38-33.3-101, et. seq. (as amended from time to time, the “**CIOA**”), and the First Amended, Restated and Supplemental Declaration of Restrictions, Covenants and Easements for Grand Valley Estates, Fruita, Colorado, recorded on December __, 2007, in Book ____, Page __, in the official real estate records of the Office of the Clerk and Recorder of Mesa County, Colorado, as supplemented and amended by the First Supplement to First Amended, Restated and Supplemental Declaration of Restrictions, Covenants and Easements for Grand Valley Estates, Fruita, Colorado, recorded on December __, 2007, in Book ____, Page __, in the official real estate records of the Office of the Clerk and Recorder of Mesa County, Colorado (as so amended and as may be further amended from time to time, the “**Declaration**”). These Bylaws supplement the Declaration in establishing rules and procedures for regulating, managing and governing the affairs of the Association. For ease of reference, some parts of the Declaration are repeated in these Bylaws, but the entire Declaration is incorporated by reference. If the Declaration is amended, the provisions of these Bylaws are automatically amended to conform to the Declaration.

1.2. Definitions; Interpretation. Capitalized words and phrases have specific definitions, which can be found in the Glossary at the end of these Bylaws.

Article 2. Members

2.1. Membership. Every Owner, by virtue of being an Owner, is a Member of the Association. Membership is appurtenant to and may not be separated from Ownership of a Lot. Ownership of a Lot is the sole qualification for Membership. No matter how many Persons have an ownership interest in a Lot, there is only one Membership per Lot, but everyone holding an ownership interest in a Lot is entitled to rights of Membership. When a Person becomes a Member, it becomes subject to these Bylaws. A Person’s Membership terminates automatically with a respect to a Lot when that Person ceases to be an Owner of that Lot, but termination of Membership does not relieve or release a former Member from liability or obligation incurred or limit the rights or remedies of the Association or others under the Governing Documents, while it was a Member.

2.2. Members’ Role in Governance of the Association. The Members have the following rights relating to the governance and management of the Association:

- (a) to call special Members meetings;
- (b) to approve an amendment to these Bylaws that determines the qualifications, powers and duties, or terms of office of Directors;
- (c) to approve the conveyance or encumbrance of the Common Elements;

- (d) to approve whether Directors receive compensation for their services;
- (e) to elect and remove Directors;
- (f) to veto the proposed Budget;
- (g) to approve Special Assessments;
- (h) to call for a review or audit of the Association's books and records;
- (i) to vote on whether to restore the Common Elements after damage or destruction by casualty or condemnation;
- (j) to terminate the Development;
- (k) to amend and to approve amendments to the Declaration; and
- (l) to give consents and approvals and exercise the other rights provided to them in the Governing Documents or the Law.

2.3. Classes of Membership. The Association has one class of Membership.

2.4. Member Votes; Allocated Interest. A Member has one (1) Vote for each Lot it owns. The percentage of Votes in the Association allocated to a Lot is a fraction (expressed as a percentage) with a numerator of 1 and a denominator equal to the total number of Lots then in the Development.

2.5. Voting by Co-Owners. If there is more than one Owner of a Lot, any co-Owner present at a Members meeting in Person or by Proxy may cast the Vote allocated to that Lot; however, if more than one co-Owner is present in Person or by Proxy, the Vote allocated to that Lot may be cast only by agreement of a majority of those co-Owners. Majority agreement exists if one co-Owner casts the Vote allocated to the Lot without another co-Owner making a prompt protest to the Person presiding over the meeting. If a disagreement arises between or among co-Owners, and two or more of them attempt to vote, none of their Votes is counted.

2.6. Voting by a Member that is an Entity. If a Member is an Entity, an Entity Representative casts the Entity's Vote. The Association may require reasonable evidence that a Person voting on behalf of an Entity is a duly qualified and authorized Entity Representative.

2.7. Suspension of Members' Voting Rights. As long as there then exists a Default, the Board may, after complying with the Procedural Guidelines in Article 12, suspend the Member's voting rights.

2.8. Manner of Voting. Members may vote in Person or by Proxy, at Members meetings, as provided in Article 3, or by written or electronic ballot without a meeting, as provided in Article 4.

2.9. Members List. Each Member shall file its mailing (and/or e-mail) address with the Association and promptly notify the Association in writing of changes. The Board shall maintain a current alphabetical list of the names and addresses of Members (and fax numbers and e-mails addresses they elect to provide), the Lot or Lots owned by each Member, and the number of Votes each Member may cast (which is one, unless a Member owns more than one Lot), for the purposes of giving Member Notices and determining the Members entitled to vote (the "**Members List**"). Only Members whose names are on the Members List are entitled to vote and/or receive Member Notices, and then only to the address, fax number or e-mail on the Members List. The Board shall modify the Members List: (a) as to mailing and e-mailing addresses or fax numbers, within five (5) days after receipt of a written request, signed by a Person shown on the most recent Members List as a Member; and (b) as to the identity of a Member, within five (5) days after receipt of evidence, satisfactory to the Board, of the transfer of an ownership interest in the Lot to which the Membership is attached. Each Member then entitled to vote (or its agent or attorney) may, on written demand to the Board, inspect and, subject to Section 14.5, copy the Members List, at the Member's expense, during regular business hours as follows: (a) for a Members meeting, from the earlier

of ten (10) days before that meeting or two (2) business days after Member Notice of that meeting was given, through the meeting, and any adjournment of it; and (b) for an action by the Members by written ballot without a meeting, from the first delivery of a written ballot to a Member through the deadline for receipt of the written ballots by the Association. Failure to prepare or make available the Members List does not affect the validity of action taken at the Members meeting or by written ballot.

2.10. Record Date. “Record Date” means the last date the Board accepts changes to the Members List for purposes of giving Members Notice and/or determining the Members entitled to vote on a given matter. Record Dates are as follows:

If determining the names and/or addresses of Members entitled to:	the Record Date is:
receive Members Notice:	the business day before Members Notice is given;
vote at a Members meeting and the number of Votes allocated to each:	the date of the meeting;
exercise rights in respect of an action by the Members without a meeting:	the date the Board adopts the resolution that will be the subject of Member action.

The Board may set an earlier Record Date of up to ten (10) days before the date Members Notice is to be given, but must do so prospectively, not retroactively.

If a Members meeting is adjourned: (a) to a date within sixty (60) days after the adjourned meeting, the Board may; or (b) to a date more than sixty (60) days after the adjourned meeting, then the Board shall, set a new Record Date to determine Members entitled to Members Notice and to vote at the meeting. If the Board sets a new Record Date, it must give a new Members Notice using the current addresses on the Members List.

2.11. Members Notice. Members Notices shall be given by or at the direction of the Secretary to Members at the addresses on the Members List as of the Record Date. A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to Members also constitutes valid Members Notice if addressed or delivered to the Member at the address in the Members List, or to Members residing in the same household and sharing the address in the Members List.

2.12. Waiver of Notice. A Member may waive Members Notice of a Members meeting, Directors meeting or other matter that requires Members Notice under the Law or the Governing Documents, whether before or after the date and time the Members Notice states the meeting or other action will occur. The Member must sign and deliver its waiver to the Secretary for inclusion in the minutes or filing with the corporate records, but delivery and filing are not conditions of the waiver’s effectiveness.

2.13. Accepting or Rejecting Votes. The Secretary or other Person authorized to tabulate Votes shall act in good faith and according to the Governing Documents in accepting or rejecting a Vote, consent, written ballot, waiver or Proxy Appointment (or revocation of Proxy Appointment). As long as that standard is met, the acceptance or rejection is valid, unless a court decides otherwise, and neither the Person tabulating Votes nor the Association-Related Disputants are liable for loss or claims arising out of the acceptance or rejection. The Association, acting in compliance with this Section, may accept a Vote, consent, written ballot, waiver or Proxy Appointment (or revocation of Proxy Appointment) as the valid act of a Member if: (a) it bears the Member’s signature, or (b) it bears the signature of someone else, as long as:

(i) the Member is an Entity and the name and signature of the signatory comply with Section 2.6;

(ii) the name signed purports to be that of: (A) an administrator, executor, guardian, or conservator representing the Member, (B) a receiver or trustee in bankruptcy of the Member, or (C) a pledgee, beneficial owner, or attorney-in-fact of the Member; and, in each case, if the Association asks, supportive evidence is presented; or

(iii) two or more persons are co-Owners of a Lot or fiduciaries and the name signed purports to be the name of at least one of the co-Owners or fiduciaries and the Person signing appears to be acting on behalf of all the co-Owners or fiduciaries.

Article 3. Members Meetings

3.1. Annual Members Meetings. The Members shall meet at least once a year at a convenient date, time and place picked by the Board. The purpose of the annual Members meeting is to elect Directors, approve the Proposed Budget and transact other business that properly comes before the Members. Failure to hold an annual meeting does not cause a forfeiture or dissolution of the Association.

3.2. Special Members Meetings. The President or Board may call a special meeting of the Members. The Members may also call a special Members meeting via a petition stating the purpose or purpose(s) of the meeting, signed and dated by Members holding at least twenty percent (20%) of the Votes entitled to be cast on the proposed issue(s) at the meeting. After receipt of a proper petition from the Members, the Secretary or another Officer shall promptly give Members Notice of the special Members meeting. If the Secretary fails to do so within thirty (30) days after receipt of the petition, the Person(s) signing the petition may set the date, time and place of the meeting and give the Members Notice themselves.

3.3. Action by the Members. Unless otherwise expressly provided in the Declaration or these Bylaws, the majority Vote or agreement of the Members present and entitled to vote at a Members meeting at which a quorum is present constitutes the approval, consent agreement, veto or other act of the Members.

3.4. Quorum. A quorum is present throughout a Members meeting if persons entitled to cast twenty percent (20%) of the Votes that may be cast for election of the Board are present at the beginning of the meeting. The term "present" means attendance in Person, by Proxy, or via telephonic or other electronic means that enables everyone participating in the meeting to hear each other. If a quorum is not present, the Members that are present may adjourn the meeting to a later date.

3.5. Members Notice of Meetings. The Secretary or other Person authorized to call a Members meeting shall give Members Notice of the meeting ten (10) to fifty (50) days before the meeting, stating the date, time and place of the meeting and the purpose(s) of the meeting. The Members Notice shall name the Person(s) to whom Proxies should be delivered. If feasible, Members Notices of Members meetings shall be given electronically, and posted on the Association's web site, if it has one. If a Member requests, the Association shall also e-mail the Members Notice at least twenty-four (24) hours before the meeting.

3.6. Member's Presence at Meeting as Waiver of Notice. By attending a Members or Directors meeting, a Member waives the right to object to lack of proper Members Notice of the meeting and the consideration at that meeting of any matter not within the purpose(s) described in the Members Notice of the meeting, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting because of lack of or defects in the Members Notice.

3.7. Members' Proxies. A Member may vote or act by a Proxy under a Proxy Appointment signed by the Member or its attorney-in-fact. A co-Owner of a Lot may vote by Proxy under a Proxy Appointment signed by that co-Owner, subject to Section 2.5. A Member may revoke its Proxy Appointment by giving written notice of revocation to the Person presiding over the Members meeting. A Proxy Appointment shall, at the minimum: (a) be in writing; (b) identify the Lot(s) to which it relates; (c) name the Person appointed as

Proxy; (d) describe the scope of the power granted by the Proxy Appointment; (e) state the duration of the Proxy's appointment; and (f) bear the signature of the Member that is exercising its rights by Proxy. A Proxy Appointment ends eleven (11) months after its effective date, unless it specifies a longer or shorter term. A legible copy of a Proxy Appointment (including a faxed copy) is as effective as the original. A Proxy Appointment is effective when received by the Secretary or the Person presiding at a Members meeting, whether by mail, overnight courier, in person or by electronic transmission (as long as the electronic transmission sets forth, or is accompanied by, written evidence that the Member transmitted or authorized the transmission). A Member may revoke its Proxy Appointment by attending and voting at a meeting or by delivering to the Secretary or presiding officer of a meeting the Member's signed written revocation or a new Proxy Appointment signed by that Member appointing a different Proxy or the same Proxy on different terms. A Proxy Appointment is void if: (a) undated; (b) purporting to be revocable without notice; or (c) obtained through fraud or misrepresentation. A Member's death or incapacity does not affect the Association's right to accept the Proxy Appointment or the Proxy's authority unless notice of the death or incapacity is received by the Secretary or other Person presiding over the meeting before the Proxy exercises its authority under the Proxy Appointment. The Board may establish reasonable policies concerning the form and use of Proxy Appointments.

3.8. Voting Procedures/Secret Balloting. Votes at Members meetings may be cast by voice, by show of hands, by consent, by mail, by electronic means, by Proxy, by written ballot, or as otherwise determined before the meeting by the Board or at the meeting or by a majority of the Members present at that meeting. Secret ballots (that is, ballots that do not refer to the names, Lot numbers or addresses, or other identifying information of voting Members) shall be used in contested elections for Directors and, if requested by twenty percent (20%) of the Members present at a meeting, for other matters on which they are voting.

Article 4. Voting and Other Action by Members in Lieu of a Meeting

Other than the election of Directors at the annual Members meeting, the Members may vote or take other action by mail or electronic means in lieu of a meeting, if in compliance with this Section. Unless the CIOA or the Governing Documents state otherwise, any instance requiring a Vote by Members at a Members meeting is satisfied by voting by written or electronic ballot. If a Vote is to be taken other than at a Members Meeting, the Secretary shall give Members Notice that includes: (a) a ballot that states each proposed action in the form of a resolution and allows Members to vote separately for or against each proposal; and (b) a solicitation for Votes that:

- (a) states the number of responses needed to meet the quorum requirements;
- (b) states the percentage of Votes needed to approve each matter;
- (c) states the deadline for receipt of the ballot in order for it to be counted, which must be at least ten (10) days after receipt of the Members Notice; and
- (d) includes enough information to enable each Person casting the ballot to reach an informed decision on the matter.

A Member may not revoke a written ballot. An action of the Members voted on by written ballot is not valid if the total Votes (whether for or against) cast is less than the minimum number of Votes needed to establish a quorum at a Members meeting. Further, an affirmative Vote by ballot only constitutes the valid action of the Members if the number of affirmative Votes cast by ballot would have constituted the valid action of the Members if taken at a Members meeting, at which the total number of Votes cast was the same as the total number of Votes cast by ballot. Action taken under this Section has the same effect as action taken at a Members meeting and may be described as such in any document.

Article 5. Board of Directors

5.1. Governance of the Association. The Association is governed by, and acts solely through, the Board according to the Declaration and these Bylaws. The Board has the power to exercise the powers and duties of the "executive board" referred to in the CIOA, as well as powers, duties and authority vested in it by the RNCA and other Laws. Except as provided in the Governing Documents or the Laws referenced above, the Board may act in all instances on behalf of the Association.

5.2. Number of Directors. The Board shall have either three (3) or five (5) Directors, as determined by the Vote of the Members at each annual meeting; however, a Vote by the Members to decrease the number of Directors from five to three does not end the term of any then sitting Director. If, through removal or resignation, the total number of Directors is fewer than three, the Board may continue to do business and take action until the vacancy(ies) are filled, with the same force and effect as if taken when there were three or more Directors.

5.3. Term of Office. Except for Declarant-appointed Directors:

5.3.1. Each Director serves for one (1) year or until his or her successor is elected.

5.3.2. No Director may serve for more than two (2) consecutive terms. If a Director is a co-Owner of a Lot, he or she may precede or succeed another co-Owner of that Lot, but the combined terms of the co-Owners as Directors shall not exceed two (2) consecutive terms. If a Director is an Entity Representative or the employee of an Entity that is a Member, he or she may precede or succeed another Person who is an Entity Representative or employee of that Entity, but the combined terms of those persons as Directors shall not exceed two (2) consecutive terms.

5.4. Qualifications for Directors. Except for Declarant-appointed Directors, each Director shall, when elected or appointed and throughout his or her term:

5.4.1. be a Member, or:

5.4.1.1. if the Member is an Entity, an Entity Representative (but no more than one Entity Representative of a given Entity may serve as Director at any one time, regardless of the number of Lots that Entity owns); and

5.4.1.2. If the Member is a co-Owner of a Lot, a co-Owner of that Lot (but no more than one co-Owner of that Lot may serve as Director at any one time);

5.4.2. not own a Lot with respect to which there exists a Default;

5.4.3. not have been absent from three (3) or more consecutive Board meetings, unless he or she notified the President at least three (3) days before the meeting, and a majority of the remaining Directors approve the absence as being for a valid purpose;

5.4.4. not have failed to vote during three (3) consecutive Board meetings, unless excused by a majority of the remaining Directors; and

5.4.5. not be engaged in an adversarial proceeding against the Association.

If a Person serving as a Director ceases to be qualified to serve as such during his or her term, he or she shall be suspended from continuing to serve as a Director until qualified or re-qualified, and during that time, his or her position is deemed to be vacant for purposes of establishing a quorum and voting. If he or she fails to become qualified or re-qualified within thirty (30) days, the majority of the other Directors may elect to treat that failure as his or her resignation, effective when the Directors' vote is taken.

5.5. Election of Directors.

5.5.1. Method of Election. The Members elect the Directors at the annual Members meeting. The Board shall give Members Notice of the date, time and place of the annual Members meeting and the number Director positions to be filled, and shall provide a procedure (described in the Members Notice) that gives a reasonable opportunity for Members to place their names or the names of other Members in nomination as candidates for the open Director position(s). The Board may require candidates to provide biographical and background information, which the Board shall disseminate to the Members without expressing a preference for any candidate. The Board shall, within three (3) business days after a Member's request (but not until three (3) business days after the Record Date has been set), provide that Member with the Members List to be used in connection with the election of Directors.

5.5.2. Non-Cumulative Voting. Members vote for Directors on a non-cumulative basis, that is, each Member has one Vote for each Director position to be filled, but may not cast more than one Vote for a given candidate. The candidates receiving the highest number of Votes are elected to fill the open positions. If there is only a single position to be filled and only a single candidate for that position, the President may permit the Members to vote by voice acclamation. If there is only a single position to be filled, but more than one candidate for that position, the candidate receiving the Vote of the majority of Members at a meeting where a quorum is present is elected to the position.

5.5.3. Counting of Ballots. Votes for contested Board seats shall be taken by secret ballot and counted by a neutral third party or a committee of volunteers who are not Directors or candidates, appointed at a Board meeting in an impartial manner. Every candidate for a Director position or his or her representative has the right to be present at the counting of the ballots.

5.6. Resignation of Directors. A Director may resign at any time by giving written notice to the President, the Secretary or to the full Board, effective when delivered, unless the notice specifies a different date. Acceptance of a resignation is not necessary to make the resignation effective.

5.7. Removal of Directors. The Members may remove a Director (other than a Declarant-appointed Director) or the entire Board (other than a Declarant-appointed Board), with or without cause, by a Vote of sixty-seven percent (67%) of Members present and entitled to vote at a special Members meeting at which a quorum is present, if the Members Notice for the meeting states that the meeting is called for that purpose. A Director whose removal is sought has the right to be present at this meeting and shall be given the opportunity to speak to the Members before they vote. If the Members remove one or more Directors, the Members shall elect his, her or their successor(s) at the same meeting, to serve for the unexpired term of his, her or their predecessor(s).

5.8. Vacancies. Except for Declarant-appointed Directors, vacancies on the Board, including vacancies due to an increase in the number of Directorships, are filled at the next annual Members meeting or at a special Members meeting called for that purpose; however, the remaining Directors may fill a Board vacancy by a two-thirds affirmative vote effective until the next Members meeting.

5.9. Compensation. Unless expressly authorized by the Board with the approval of Members owning Lots to which are allocated more than fifty percent (50%) of Votes in the Association, no Director shall receive compensation from the Association for service he or she renders as a Director; however, a Director may, without need for the Members' approval, be reimbursed for actual expenses incurred in the performance of Association duties, as long as a majority of the other Directors approve. Further, a majority of the Directors may, without seeking the Members' approval, compensate a Director (or the Entity with which that Director is affiliated as an employee or otherwise) for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contractual arrangement with the Association.

5.10. Directors Notices. Directors Notices shall be given to Directors by, or at the direction of, the Secretary at the addresses shown on the Members List (unless a Director requests a different address in writing delivered to the Secretary).

5.11. Waiver of Notice. A Director may waive Directors Notice of a Board meeting, whether before or after the date and time the Directors Notice states the meeting or other action will occur. The waiver must be signed by the Director, and delivered to the Secretary for inclusion in the minutes or filing with the Association's records, but delivery and filing are not be conditions of the effectiveness of the waiver.

5.12. Meetings of Directors.

5.12.1. Regular Meetings. The Board shall hold at least four (4) regular meetings each year, at a date, time and place (within the Development) agreed to by the Directors.

5.12.2. Special Meetings. The Board may hold special meetings when called by the President or by any two (2) Directors.

5.12.3. Notice of Board Meetings. Regular Directors meetings may be held without further Directors Notice and/or Members Notice if the dates, times and places of the regular meetings were already stated in an earlier Directors Notice and/or Members Notice, as the case may be. The Secretary shall give at least forty-eight (48) hours prior Directors Notice and Members Notice before each special Board meeting, stating the date, time, place and purpose of the meeting.

5.12.4. Director's Presence at a Meeting Deemed Assent. A Director present at a Board meeting when Board action is taken is deemed to assent to that action unless he or she:

(a) objects when the meeting starts (or promptly after he or she arrives if the meeting is already in progress) to (i) holding the meeting and then does not vote for any action taken at the meeting; or (ii) to the taking of that action and then does not vote in favor of that action;

(b) contemporaneously requests that the minutes of the meeting record his or her dissent to or abstention on a specific action; or

(c) delivers written notice of his or her dissent to or abstention on a specific action to the presiding officer of the meeting before the meeting adjourns or to the Association promptly after the meeting adjourns.

A Director who votes in favor of an action may not later exercise the right of abstention on or dissention to that action.

5.12.5. Quorum. A quorum is present throughout a Board meeting if Directors entitled to cast fifty percent (50%) of the votes on the Board are present at the beginning of the meeting; however, if there are fewer than three (3) Directors, all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present constitute a decision of the Board unless there are fewer than three (3) Directors, in which case, a Board decision requires unanimity. If a quorum is not present, a majority of the Directors present may adjourn the meeting.

5.12.6. Proxies. As provided in the Declaration, Directors may not vote or be considered present by Proxy, but for purpose of clarification, the term "proxy" in the Declaration refers to a Person appointed by another, to whom the appointer delegates, with or without direction, the appointer's right to vote or take other action on behalf of the appointer. A Director may, however, vote and be present by proxy in the more limited sense permitted by the RNCA, which permits a Director to appoint another Director as his or her proxy, with a specific direction to vote yes or no, or to abstain, on each particular issue for which the proxy appointment was signed. A proxy who is not a Director or who, if a

Director, has not been given specific directions on how to vote, is not counted for the purpose of determining a quorum or as a vote on the particular issue.

5.12.7. Telephone or Electronic Communication in Lieu of Attendance. A Director may be present and participate in a Board meeting by using an electronic or telephonic communication method that enables allows the Directors to be heard by each other.

5.12.8. Board Meetings Open to Members. Meetings of the Board and its committees (including the Design Review Committee) are open to Members and their representatives, except as provided in Section 5.12.10. Before the Board votes on a given issue, it shall invite Members or their designated representatives to speak regarding that issue, subject to reasonable time restrictions. If more than one Person wants to address the issue and there are opposing views, the Board may limit to discussion to a reasonable number of Persons speaking on each side of the issue.

5.12.9. Recording of Board Meetings. A Member may record the proceedings of Board meetings that are required to be open to Members under the Governing Documents or the CIOA, by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings, which, among other things, may include requiring the Member to provide to the Board, at the Board's cost, a complete and unedited copy of the recording.

5.12.10. Exception to Open Meeting Requirement.

5.12.10.1. The Board (and committees of the Board) may discuss certain matters in Executive Session at regular or special Board or committee meetings or portions of Board or committee meetings, or when the following are discussed. **"Executive Session"** means the portion of a Board or committee meeting from which Members are excluded or at which attendance is otherwise limited to Directors and other persons designated by the Board. The Board and committees of the Board may deliberate in Executive Session only when the discussing the following:

- (a) Association employees; the contract with the Managing Agent; or the employment, promotion, discipline, or dismissal of an Officer, agent, or employee of the Association;
- (b) consultation with legal counsel on pending or imminent court proceedings or matters that are subject to attorney-client privilege;
- (c) investigative proceedings concerning possible or actual criminal misconduct;
- (d) matters protected from public disclosure by specific constitutional, statutory, or judicially imposed requirements
- (e) matters the disclosure of which would constitute an unwarranted invasion of individual privacy; or
- (f) review of or discussion relating to a written or oral communication from legal counsel.

5.12.10.2. Before the Board retires into Executive Session, the President or the chair of the committee, as the case may be, shall announce the general subject matter to be discussed, as enumerated in paragraphs (a) to (f) above; and the meeting minutes shall indicate that an Executive Session was held and specify its general subject matter (using the terms above).

The Board may discuss, but not take action on the matters enumerated in Section 5.12.10.1. Action on those matters may only be taken in an open session.

After final resolution of a matter on which the Board received legal advice or that concerned pending or contemplated litigation, the Board may elect to preserve the attorney-client privilege in

an appropriate manner, or to disclose at an open meeting whatever information about the matter the Board considers appropriate.

5.13. Delegation by the Board of Its Authority and Duties. Except as provided below, the Board may delegate some of its authority to a Managing Agent, but doing so does not relieve the Board of final responsibility for the management of the Development. The agreement between the Association and the Managing Agent shall not exceed one year, and is terminable for cause by the Association without penalty to the Association. Any such contract shall be subject to renegotiation. The Board may not delegate its authority to:

- (a) appoint or remove Directors, members of Board committees or Officers;
- (b) amend or revoke all or part of the Governing Documents;
- (c) enforce the Governing Documents against a Member, except for sending of default notices and imposing routine interest and late charges for delinquent Assessments;
- (d) levy Assessments; or
- (e) perform functions that are judicial or legislative in nature, as opposed to administrative or managerial.

5.14. Delegation of Financial or Monetary Responsibilities; Fidelity Bond. If the Board or the Officers delegate (with or without compensation) to a Managing Agent or anyone else some of their powers relating to collection, deposit, transfer, or disbursement of association funds, then the Managing Agent or other delegee shall:

- (a) maintain fidelity insurance coverage or a bond: (i) in the amount the Board determines, but in no event less than the greater of \$50,000.00 and the maximum funds for which the Managing Agent or delegee is responsible; (ii) naming the Association as an insured; and (i) waiving defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.
- (b) keep the Association's funds and accounts separate from the funds and accounts of other associations managed by the Managing Agent or other delegee;
- (c) maintain the Association's reserve account separate from the Association's operational accounts; and
- (d) prepare and present, directly or by a public accountant or certified public accountant, an annual accounting and financial statement for the Association's funds and a financial statement.

Article 6. Officers and Their Duties

6.1. Election and Removal of Officers; Vacancies. The Board shall, at its first meeting after the annual Members meeting at which Directors are elected, elect officers ("**Officers**") from among its members.

6.2. Enumeration of Offices. The Officers are the President, Vice-President, Secretary, and Treasurer, each of whom shall at all times be members of the Board, and whatever other Officers the Board creates. The same Person may hold two offices; however, the President and Secretary shall be different persons.

6.3. Term of Officers. Officers serve for a term of one (1) year or until their duly appointed successors take office.

6.4. Resignation and Removal. The majority of the Directors may remove an Officer from office with or without cause. An Officer may resign at any time by giving written notice to the Board, the President or the Secretary, effective when delivered unless the notice states a different date. Acceptance of a resignation is not necessary to make it effective.

6.5. Vacancies. A majority of the Directors may appoint a Person to fill a vacant office, who serves for the remainder of the term of his or her predecessor.

6.6. Duties. The duties of the Officers are as follows:

6.6.1. President. The President has the general powers and duties incident to the office of president of a Colorado nonprofit corporation. Specifically, the President presides at Board meetings and Members meetings; appoint committees; sees that orders and resolutions of the Board are carried out; signs contracts, leases and other written instruments; and directs, supervises, and coordinates and has general control over the day-to-day affairs of the Association.

6.6.2. Vice President. The Vice President takes the place of the President and performs the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice-President is able to act, the Board shall appoint another Director to act in the place of the President on an interim basis. The Vice-President also performs other duties imposed by the Board or by the President.

6.6.3. Secretary. The Secretary records the Votes and maintains the minutes of meetings and proceedings of the Board and of the Members; serves Notice of meetings of the Board and of the Members; keeps appropriate current records showing the Members together with their addresses; causes Association records to be kept and maintained; and performs other duties incident to the office of a secretary of a Colorado nonprofit corporation or as required by the Board or the President.

6.6.4. Treasurer. The Treasurer is responsible for the receipt, deposit and disbursement of Association funds and securities and for maintenance of full and accurate financial records; prepares the annual budget and a statement of income and expenditures to be presented to the Members, and delivers a copy of each to the Members. The Treasurer performs the duties incident to the office of treasurer of a Colorado nonprofit corporation and other duties assigned by the Board.

6.7. Responsibility for Preparing, Signing and Recording Amendments to Declaration. The President and any other Officer appointed by the Board may prepare, sign, certify, and record amendments to the Declaration on behalf of the Association;

6.8. Delegation. The duties of any Officer may be delegated by the Board to the Managing Agent or another Officer or Director; however, the delegation does not relieve the Officer of responsibility under this Section or under Colorado law.

Article 7. Committees

7.1. Designated Committees. The Board may appoint whatever committees it considers appropriate to carry out its purposes, including the Design Review Committee. The Board may terminate committees, other than the Design Review Committee, and/or remove committee members with or without cause.

7.2. Open Committee Meetings. Committee meetings are open to Members to the same extent as Board meetings.

Article 8. Liability of Directors Officers, Committee Members and Employees of the Association; Indemnification

8.1. Liability of Directors and Officers. Except as expressly provided in these Bylaws, the Declaration or by Law, no Director or Officer is liable for actions taken or omissions made in the performance of his or her duties except for wanton and willful acts or omissions. However, Directors and Officers are subject to the standards in section 7-128-401, C.R.S. with regard to the investment of funds in the Reserve Fund (and for purposes of that statute only, a Managing Agent, attorney, or accountant employed or engaged by the Association is included in the definition of "officer").

8.2. Indemnification of Directors and Officers. To the extent permitted by Law, the Members and the Association indemnify each Director and Officer against expenses and liabilities, including Legal Costs incurred by or imposed on him or her in a proceeding to which he or she is a party or in which he or she becomes involved, by reason of his or her current or past status as Director or Officer, whether or not he or she is a Director or Officer when the expenses are incurred; except to the extent the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties. This indemnification extends to a Director's or Officer's expenses and liabilities in settling a case or claim, but only if the Board approves the settlement and reimbursement as being in the best interests of the Association.

8.3. Obligation to Indemnify.

8.3.1. The Association shall indemnify any Person who was or is a party, or is threatened to be made a party, to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative; because he or she is or was a Director, Officer or committee member of the Association; provided he or she is or was serving at the request of the Association in that capacity; and provided that he or she: (a) acted in good faith; (b) reasonably believed his or her action was in the best interests of the Association; and (c) with respect to any claimed criminal action or proceeding, had no reasonable basis to believe his or her conduct was unlawful.

The determination of the action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, does not of itself create a presumption that the Person did not act in good faith; did not reasonably believe his or her action was in the best interests of the Association; or, with respect to any criminal action or proceeding, had no reasonable basis to believe his or her conduct was unlawful.

8.3.2. Unless a court determines that, in view of all circumstances, the Person is fairly and reasonably entitled to expenses, the Association shall not indemnify him or her:

(a) in a proceeding by or in the right of the Association where he or she has been found liable to the Association; or

(b) in another proceeding where he or she has been found liable for receiving an improper personal benefit (whether or not involving action in an official capacity).

Otherwise, to the extent that he or she was wholly successful on the merits in defense of an action, suit or proceeding described above, the Association shall indemnify him or her against his or her actual and reasonable expenses (including expert witness fees, attorney fees and costs).

8.4. Determination Required. The Board determines, by a majority vote of a quorum that excludes Directors who are or were parties to the action, suit or proceeding, whether the Person requesting indemnification has met the standard of conduct set forth above. If a quorum cannot be obtained on that basis, or, even if a quorum exists but the Board so directs, a determination may be made, at the Board's

discretion by: (a) independent legal counsel selected by a majority of the full Board; or (b) the voting Directors, excluding Directors who are themselves seeking indemnification.

8.5. Payment in Advance of Final Disposition. The Association shall pay for or reimburse a Person's reasonable litigation-related expenses in advance of final disposition of the action, suit or proceeding if the Person requesting indemnification provides the Board with a written statement that: (a) he or she believes in good faith that he or she meets the standard of conduct described above; and (b) he or she shall repay the advance if it is ultimately determined that he or she does not meet the standard of conduct described above.

8.6. No Limitation of Rights. The indemnification provided in this Article does not exclude or limit: (a) other rights to which those indemnified may be entitled under these Bylaws or a separate agreement, a Vote of the Members or disinterested members of the Board, or otherwise, or (b) rights granted under the CIOA or the RNCA.

8.7. Directors and Officers Insurance. The Association shall purchase and maintain insurance on behalf of current or former Directors, Officers, the manager, committee members, or others acting at the Board's direction, covering defense and liability expenses arising out of an action, suit or proceeding asserted against that Person by virtue of his or her actions on behalf of the Association or at the Board's direction, whether or not the Association has the power to indemnify him or her against liability under this Article.

Article 9. Conflicts of Interest Policy for Directors

9.1. Purpose. This Article states the Association's policy on conflicts or potential conflicts of interest on the part of Directors. The purposes of the policy are to:

- (a) protect the interest of the Association when it contemplates Board Action in which a Director has, or appears to have, a Conflict of Interest;
- (b) ensure that Board Actions appear to be, and are, fair to, and made in the best interests of, the Association; and
- (c) offer guidance to Directors to identify situations that present potential Conflicts of Interest.

This Article supplements but does not replace Laws governing conflicts of interest in not-for-profit corporations. If a conflict arises, the Laws control.

9.2. Definitions. The following capitalized words and phrases used in this Article are defined below.

"Annual Survey:" a statement identifying a Director's business, familial and other affiliations and interests that relate or could relate to the business and affiliations of the Association, in the form of Exhibit B, attached.

"Board Action:" a decision, vote or other action taken by the Board that has legal or economic effect or constitutes "conducting business.

"Conflict of Interest:" arises when a Director's Interest in a Board Action or Contract or Transaction would, or reasonably could, affect, or give the appearance of affecting, his or her judgment in the exercise of his or her authority. A Conflict of Interest is presumed to exist if:

- (a) a Director, Family Member or Related Entity is: (i) affected by a Board Action in a different way or to a greater degree than other Members; or (ii) a party or potential party to a Contract or Transaction; or

(b) a Director accepts a gifts, entertainment or other favor (other than items or entertainment of nominal or insignificant value unrelated to a particular Board Action, Contract or Transaction), under circumstances where it can reasonably be inferred that the gift or other favor would, or was intended to, influence him or her in performing his or her duties, and the individual or entity offering the gift or favor does or seeks to do business with the Association or otherwise obtain a benefit from a Board Action.

“Conflicted Board Action:” with respect to a given Director, a Board Action in which he or she has a Conflict of Interest.

“Conflicted Contract or Transaction:” with respect to a given Director, a Contract or Transaction in which he or she has a Conflict of Interest.

“Conflicted Director:” a Director with a Conflict of Interest in a Board Action, Contract or Transaction.

“Contract or Transaction:” an existing or contemplated agreement, arrangement or relationship, written or oral, between the Association and another Person or entity for: (a) providing goods or services to or by the Association, whether on a one-time or ongoing basis, in consideration of money or other benefit, or (b) granting property or rights by or to the Association.

“Disinterested Director:” a Director who does not have an Interest with respect to a given Board Action.

“Family Member:” the parent, sibling, child, spouse or domestic partner of a Director, and the parent, child, spouse or domestic partner of any of them.

“Interest:” a reasonable expectation on the part of a Director that a contemplated Board Action or Contract or Transaction will or could result in financial or other gain or loss to the Director, a Family Member or a Related Entity.

“Interested Director:” a Director with an Interest in a Board Action or a Contract or Transaction.

“Proprietary Information:” the following (unless obtainable or obtained from other sources not also bound by a confidentiality restriction):

(a) written materials, computer files, records or oral communications to, by or from Directors, the Managing Agent or the agents employees, contractors or advisors of the Association or the Managing Agent for or on behalf of the Association, whether or not marked "Proprietary" or "Confidential," that contain information about the Association or a Board Action, Contract or Transaction;

(b) information about the Members; and

(c) other information that the Board identifies as proprietary or confidential.

“Related Entity:” an Entity:

(a) in which a Director or Family Member has an ownership or investment interest of more than five percent (5%)or a compensation arrangement in excess of \$1,000.00 in a given year;

(b) that employs a Director or Family Member; or

(c) in which a Director or Family Member serves as a director, officer, agent, partner, associate, trustee, personal representative, receiver, guardian, custodian, conservator or other legal representative.

9.3. Basic Rule for Conflicts of Interest.

9.3.1. A Conflicted Director shall abstain from participating in the discussion (inside or outside of meetings) of, and action to be taken on, a Conflicted Board Action or a Conflicted Contract or Transaction. A Conflict of Interest is deemed to exist unless and until the Board votes otherwise under Section 9.7.

9.3.2. An Interested Director may request the Board to determine whether or not a Conflict of Interest exists, under Section 9.7.

9.3.3. If the Conflicted Director is present at a Board meeting at which deliberation or action is to be taken on a Conflicted Board Action of Conflicted Contract or Transaction, the Conflicted Director shall, whether or not he or she has previously disclosed the Conflict of Interest, disclose his or her Conflict of Interest and facts material to it. If the Conflicted Director is not present before deliberation and action begins, the President shall, if aware of the Conflict of Interest, disclose the Conflict of Interest of the absent Conflicted Director, and facts material to it, before deliberation and action begins. Whether the Conflicted Director is present or absent, the disclosure shall be reflected in the minutes of the meeting or, at the option of the Secretary, in a separate memorandum filed with the original minutes of the meeting. If the Conflicted Director is the President, then the required disclosure shall be made the Secretary. If requested by a majority of the Disinterested Directors present at the meeting, the Conflicted Director shall absent him or herself from the meeting during the discussion and vote on the Conflicted Board Action or Conflicted Contract or Transaction.

9.4. Basic Rule for Disclosure or Use of Proprietary Information by Directors. Except as permitted by this Article, required by Law or authorized by a majority of Disinterested Directors at a meeting at which a quorum is present, a Director may not disclose or use Proprietary Information for his or her personal benefit or for the benefit of a Family Member or Related Entity. The Board may impose additional limitations on Directors' disclosure and use of information and materials, and may require Directors to sign confidentiality agreements.

9.5. Self-Disclosure. Within thirty (30) days after the annual Members Meeting at which Directors are elected, the Board shall distribute, and each Director shall within five (5) days after receipt, complete, sign and return an Annual Survey. The Board shall review each Annual Survey for existing and potential Conflicts of Interest. In addition to each Director's annual disclosure, if, during his or her term of office, a Director becomes aware of a previously undisclosed Interest in a contemplated Board Action or a Contract or Transaction, he or she shall, within three (3) days after becoming aware (but in any case, before the Board engages in further discussion or takes Board Action on the matter), submit a written statement describing the nature of the Interest, to the President, with a copy to the other Directors.

9.6. Disclosure by One Director of an Interest on the Part of Another Director. If a Director (the "Concerned Director") has reasonable grounds to believe that another Director has or may have an undisclosed Interest in a contemplated Board Action or Contract or Transaction, the Concerned Director shall promptly after forming his or her belief (but in any case, before further discussion or Board Action on the matter), submit a written statement describing the nature of the Interest, to the President, with a copy to the other Directors. The Concerned Director is encouraged, but not required, to discuss the matter with the allegedly Interested Director before notifying the President and other Directors, so that the Interested Director may self-report under Section 9.5. An allegedly Interested Director may request the Board to determine whether or not a Conflict of Interest exists, under Section 9.7. A Conflict of Interest is deemed to exist unless and until the Board votes otherwise under Section 9.7.

9.7. Determining Whether a Conflict of Interest Exists. At the request of an Interested or allegedly Interested Director, the Disinterested Directors shall, at a meeting at which a quorum is present, consider whether or not the Interest or alleged Interest is, in fact, a Conflict of Interest. If the Interested, or

allegedly Interested Director requests, the Disinterested Directors shall give him or her the opportunity to disclose material facts and circumstances and make his or her case before or at the meeting at which his or her case is being considered. The Interested or allegedly Interested Director shall not be present during the deliberation and vote of the Disinterested Directors other than to make his or her presentation. If the Disinterested Directors determine that no Conflict of Interest exists or appears to exist, then the Director may exercise his or her authority and perform the duties of his or her office to the same extent as if he or she had no Interest in the Board Action or Contract or Transaction. The minutes of the meeting of the Disinterested Directors shall contain: (a) the name(s) of the Interested Director(s); (b) the Board Action or Contract or Transaction in question; (c) the facts and circumstances; (d) if the Interest is determined not to constitute a Conflict of Interest, the reasons for that determination; (e) the names of persons present for the discussion and vote; and (f) votes taken in connection with it.

9.8. Confidentiality of Disclosed Business Interests. To the extent permitted by Laws, information about the business and personal interests and relationships and affairs of a Director disclosed or learned under this Article and not otherwise a matter of public knowledge, is confidential and, unless a court orders, is available only to the Board.

9.9. Violations of the Conflicts of Interest Policy. If the Board has reasonable cause to believe that a Director failed to disclose an actual or possible Interest on his or her own part or on the part of another Director, it shall inform the non-disclosing Director and give him or her an opportunity to provide additional information and discuss fully the facts and circumstances. If, after discussing the matter with the non-disclosing Director, and making further investigation if warranted, a majority of the Disinterested Directors at a meeting where a quorum is present, determine that the Director's non-disclosure was intentional or negligent, the Disinterested Directors shall take appropriate disciplinary or corrective action, which may involve removing the non-disclosing Director from office or terminating a Contract or Transaction in which he or she has an Interest or Conflict of Interest.

9.10. Periodic Compliance Reviews. The Board shall conduct periodic reviews of Association activities in connection with Board Actions and Contracts or Transactions to determine compliance with this Policy, and, in doing so, may, but need not, use outside advisors. If outside experts are used, their use does not relieve the Board of its responsibility for ensuring compliance with this Article. The Board shall also review this Article annually to determine whether modifications are warranted, and, if so, vote to amend these Bylaws accordingly.

Article 10. Rules

10.1. Adoption of Rules. The Board may adopt, amend or revoke reasonable Rules with respect to the Common Elements and the Lots to carry out the intentions of the Declaration, to promote the general health, safety and welfare of owners and to preserve and protect property rights, but only after a Members meeting called for the purpose of discussing the proposed action, attended by a sufficient number of Directors to constitute a quorum at a Directors meeting. Members Notice of the Members meeting shall contain the full text of the Rule proposed for adoption, amendment or revocation. No quorum is required at the Members meeting. Members may discuss the proposed Rule-related action, and may express their approval or opposition by means of an advisory Vote, but that Vote is not effective with respect to the proposed action. The Board may take action on a Rule by a majority vote of the Directors present at a Directors meeting where a quorum exists. Action on a Rule is effective fifteen (15) days after Members Notice is delivered to Members stating the action taken; however, the Members may veto the Rule-related action at a special Members meeting called for that purpose and held no later than sixty (60) days after the Rule-related action becomes effective, by a Vote of the Members holding Lots comprising sixty-seven percent (67%) of the Votes in the Association.

10.2. Enforcement of Rules. The Board shall interpret and enforce the Rules uniformly as among Members, but the Rules may differentiate, and the Board may differentiate in enforcing them, among Members, Related Users and the general public. The Board may enforce the Rules through reasonable

and uniformly imposed fines and penalties that are included in the Rules. Owners and their Related Users shall comply with the Rules.

Article 11. Enforcement

11.1. Defaults by Members in Performing Their Obligations under this Declaration. The occurrence of the following constitutes a default by a Member of its obligations under this Declaration (“**Default**,” and the Member that is in default being a “**Defaulting Member**”):

(a) failing to pay an Assessment or other amount due to the Association within five (5) days after the Association’s notice of non-payment;

(b) failing to correct, within thirty (30) days after the Association’s notice to the Member, and if applicable, the Related User, a physical condition that violates the Governing Documents that the Member or Related User created or allowed to exist or continue on its Lot or that the Member or Related User created elsewhere in the Development, subject to the following qualifications: (i) if the corrective action is, by its nature, not correctable within 30 days, the 30-day period will be extended as long as the Member or Related User starts corrective action within ten (10) days after the Association’s notice and diligently pursues it to completion; (ii) if the physical condition that violates the Governing Documents poses an imminent threat of injury or death or loss, damage or diminution in value to the property of others, the 30-day cure period shall be reduced to five (5) days or whatever shorter time it takes to take corrective action;

(c) failing to stop, within two (2) days after the Association’s notice to the Member and, if applicable, the Related User, an activity engaged in by the Member or its Related Users that violates the Governing Documents.

11.2. First Mortgagee’s Right to Cure. If requested in writing by a First Mortgagee, the Association shall, at the same time it sends a default notice to a Member, send a copy of the default notice to the address included with the First Mortgagee’s request; however, neither Association, the Directors, the Officers or their employees, contractors or agents, are liable to a First Mortgagee for failing to comply with this sentence.

11.3. Association’s Right to Enter onto a Lot. The Association, the Directors and Officers and their respective employees, contractors and agents may, on reasonable advance notice, enter onto a Lot to ascertain whether the Lot, its Member and/or it’s the Related Users comply with the Governing Documents.

11.4. Enforcement Actions.

11.4.1. General. If a Default exists, the Association may, after complying with the Procedural Guidelines under Article 12, enforce the Governing Documents by:

(a) suspending the Defaulting Member’s voting rights with respect to the Lot or Lots until the Default is cured;

(b) suspending the Defaulting Member’s or Related User’s use of the Common Elements (other than for ingress or egress);

(c) publicly posting notice of the Default on the Association’s web site or on a bulletin board at a conspicuous place within the Common Elements (but posting notice of a Default is not a precondition to the Association’s exercise of its other remedies);

(d) levying whatever Default Assessment is provided for in the Governing Documents;

(e) if the Default is by a Related User, enforcing in the name of the Member, as landlord, the terms of the Member's lease with the Related User; and/or

(f) suing in equity or at law for specific performance by the Defaulting Member or its Related User or for other legal or equitable relief (including, in the case of a Related User, removing the Related User and its property from the Lot under force of law).

11.4.2. Monetary Default.

11.4.3. An Assessment that is not fully paid within ten (10) days after it is due bears interest from the due date until paid in full at the Delinquency Rate. In addition, the Association shall assess a monthly late charge for each month an Assessment is not paid in full.

11.4.4. The Association shall not take the actions or exercise the remedies provided in this Section unless and until it has complied with the Procedural Guidelines under Article 12. If an installment of an Assessment or other amount payable to the Association remains unpaid in full for thirty (30) days after the due date, the Board may, and if the installment remains unpaid in full for ninety (90) days after the due date, the Board shall: (a) declare the balance of the Assessment immediately due and payable; and (b) exercise its remedies at law or in equity, individually, sequentially or together, including seeking money damages against the Defaulting Member and/or foreclosing on the Association's lien against the Defaulting Member's Lot. The Association's Legal Costs are added to the delinquent Assessment as they are incurred, and are recoverable by the Association from the Defaulting Member or from the proceeds of the foreclosure sale of its Lot. The Association may bring a foreclosure action to enforce its lien against the Lot without being estopped or otherwise precluded from doing so again for the same or subsequent delinquent Assessments. The Association may bid on the Lot at a foreclosure or other legal sale, and if the successful bidder, may purchase it and then hold, lease, mortgage and/or convey title to it, and, until title is transferred, cast the votes appurtenant to the Lot. If the Defaulting Member abandons or vacates its Lot after a foreclosure action is filed, the Association may take possession of the Lot or apply for the appointment of a receiver without notice to the Defaulting Member, and may thereafter rent the Lot pending the foreclosure judgment. The rights of the Association with respect to a Lot (but not with respect to the Defaulting Member) are, to the extent permitted by the Act, subordinate to the rights of a First Mortgagee as stated in its First Mortgage (including any assignment of rents).

11.4.5. Non-Monetary Default. After complying with the Procedural Guidelines under Article 12, the Association, may, but is not required to, take whatever action it considers appropriate to cure a non-monetary Default, and may enter onto the Lot to do so, charging back to the Defaulting Member the Association's cost of the corrective action (plus fifteen percent (15%) by levying a Default Assessment against the Lot.

11.5. Damage or Destruction of Common Elements by a Member. If a Member or its Related User damages or destroys part of the Common Elements, whether or not the occurrence constitutes a Default, the Board may, but is not required to, cause the damage or destruction to be repaired or replaced to its condition before the damage or destruction, and, after complying with the Procedural Guidelines under Article 12, levy a Default Assessment against the Lot for the cost of the repair or replacement (plus fifteen percent (15%) for overhead).

11.6. Actions by or against Other Persons under the Governing Documents. Except to the extent otherwise expressly stated in the CIOA, other Laws or the Governing Documents, a Member may enforce the Governing Documents against the Association, the Directors, the Officers, the Managing Agent, other Members and/or Related Users (and the respective employees, contractors and agents of each of them), under Article 13, or, if Article 13 does not apply, by proceedings at law or in equity for monetary or injunctive relief.

11.6.1. Legal Costs. If legal action, arbitration or other similar proceeding is initiated to enforce or interpret a provision of the CIOA, other Laws or the Governing Documents, the prevailing party is entitled to an award of its Legal Costs. The “prevailing party” is the party that receives substantially the relief desired whether by final order in arbitration, dismissal, summary judgment, judgment or otherwise.

11.6.2. Statutory Limitation on Claims. Pursuant to the CIOA, neither the Association nor a Member may bring an action to enforce a building restriction contained in the Governing Documents or to compel the removal of an Improvement that violates a building restriction unless the action is commenced within one (1) year after the date the Person bringing the action knew or in the exercise of reasonable diligence should have known of the violation.

Article 12. Procedural Guidelines to Ensure Fairness in Enforcement Actions

12.1. Purpose. The Association shall follow the guidelines in this Article (“**Procedural Guidelines**”) before taking Enforcement Action against a Defaulting Member. The purposes Procedural Guidelines are to:

- (a) protect the interests of the Association and Members through effective enforcement of the Governing Documents;
- (b) ensure that Members have a fair, predictable and understandable process for contesting an Enforcement Action by the Association;
- (c) offer guidance to Members, Directors and Panelists on what to expect and how to conduct Hearings; and
- (d) eliminate or reduce the need for the Association and/or Members to seek judicial review of Enforcement Actions.

These Procedural Guidelines create an informal process that does not require the involvement of attorneys (although the Contestant may be represented by an attorney if he or she wants). The Procedural Guidelines are not intended to provide the equivalent “due process” safeguards available to a defendant or respondent in a judicial proceeding. For example, rules of evidence do not apply; no procedure exists for pre-hearing discovery; and there is no right of cross-examination.

12.2. Definitions. The following capitalized words and phrases are defined below.

“Association Representative:” the Person who represents the Association in presenting evidence and making arguments at a Hearing in support of the allegations that are the basis for the proposed Enforcement Action.

“Contestant:” a Defaulting Member or Related User that elects to contest an proposed Enforcement Action or the Board’s determination that it is a Defaulting Member.

“Enforcement Action:” action by the Board to enforce the Governing Documents against a Defaulting Member, including exercising the remedies described in Sections 11.4 and 11.5. Giving notice to a Member or Related User that an Owner Default exists is not, standing alone, an Enforcement Action.

“Enforcement Notice:” the written notice from the Board to the Defaulting Member conforming to Section 12.4.1.

“Hearing:” the informal procedure before the Panel at which the Association Representative presents evidence that is the basis of the proposed Enforcement Action, and the Contestant presents evidence in its defense.

“Hearing Principals:” the Association, as represented by the Association Representative, and the Contestant.

Panel:” the three (3) person panel appointed by the Board (each appointee, a “Panelist”) to be present at Hearings, consider the evidence and arguments of the Hearing Principals, make findings of fact, and make a recommendation to the Board based on those findings.

“Panelists:” the three persons appointed by the Board to sit on the Panel.

“Presiding Panelist:” the Panelist appointed by the Board to preside over the Panel.

12.3. The Panel. The Board shall appoint a Panel to conduct Hearings. The Panel is not a “committee” to which the Board has delegated some of the Board’s power. The role of the Panel is advisory to the Board. After hearing the evidence, the Panelists make written findings of fact, and present them to the Board with a recommendation on whether or not the Enforcement Action should be carried out. The Board makes the final decision on each Enforcement Action, and, although the Board need not follow the recommendation of the Panel it is expected that, unless there are serious mitigating circumstances, the Board will generally follow the Panel’s recommendations. The Board shall appoint one Panelist as the Presiding Panel. The Presiding Panelist is responsible for conducting the Hearing and authoring the findings of facts agreed on by the Panelists and writing and delivering the Panel’s recommendation to the Board based on the findings of fact. Panelists serve for a term of one (1) year, but may be removed by the Board at any time with or without cause. Panelists may not be current Directors or employees of the Association or the Managing Agent. At least one Panelist shall be a Member. Panelists need not be lawyers. Panelists serve without compensation. A Panelist may resign at any time by written notice to the Board, effective when delivered. Panelists shall comply with the Conflict of Interest Policies to the same extent as directors under Article 9.

12.4. Enforcement Notice.

12.4.1. Before taking an Enforcement Action under Article 11, the Board shall deliver an Enforcement Notice to a Defaulting Member in the same manner as other Member Notices, and, if applicable, its Related User within ten (10) days after it is determined that a Default exists. The Enforcement Notice is separate from the notice of default required under Section 11.1. The Enforcement Notice shall include: (a) a citation to the applicable provision(s) of the Governing Documents and a brief description of the facts or circumstances that constitute the Default; (b) the proposed Enforcement Action or range of Enforcement Actions; (c) a copy of this Article and any Rules that supplement it; and (d) the following statement in bold-face type at least 12 points high: **“YOU HAVE THE RIGHT TO CONTEST THE PROPOSED ENFORCEMENT ACTION BY APPEARING IN PERSON AT A HEARING SCHEDULED FOR [INSERT DATE AND TIME] AT [INSERT LOCATION]. IF YOU WANT TO CONTEST THE PROPOSED ENFORCEMENT ACTION, YOU MUST NOTIFY [INSERT NAME OF PRESIDING PANELIST] IN WRITING BY 5:00 P.M. ON [FIVE BUSINESS DAYS AFTER THE DATE OF DELIVERY OF THE ENFORCEMENT NOTICE]. IF YOU DO NOT DELIVER YOUR NOTICE BY THAT DATE AND TIME YOU WAIVE YOUR RIGHT TO CONTEST THE PROPOSED ENFORCEMENT ACTION.”**

If the Defaulting Member or its Related User fails to deliver its written notice of contest by the date stated in the Enforcement Notice, the Defaulting Member waives its right to a Hearing under this Article, and the Board may proceed with the Enforcement Action. If the Defaulting Member delivers its written notice of contest by the date stated in the Enforcement Notice, the provisions of Sections 12.4 through 12.7 apply.

12.5. Pre-Hearing Matters.

12.5.1. Preparation for the Hearing; Obtaining Information. There is no formal “discovery” process. However, the Hearing Principals may gather whatever information and evidence that each believes relevant to its cause, by whatever lawful method each elects. Directors and employees of the Managing Agent with knowledge of facts relevant to the Enforcement Action shall cooperate with the

Hearing Principals in their respective fact-finding, and provide evidence (including testimony at the Hearing) reasonably requested by them. No Member or Related User (unless a Director or employee of the Managing Agent) has a duty to cooperate in the fact-finding process or provide evidence (including testimony at the Hearing). The Hearing Principals shall respect a Member's or Related User's stated desire to be left alone. The Hearing Principals shall each provide to the other and to the Presiding Panelist, at least two business days before the Hearing, the names of persons expected to testify at the Hearing and copies of documents, photographs and other materials to be offered as evidence (unless incapable of copying, in which case, a written description of the evidence suffices). Only persons whose names have been timely submitted may testify at the Hearing, and only evidence timely submitted may be offered at the Hearing.

12.5.2. No "Ex Parte" Communication with Panelists. Neither Hearing Principal may communicate orally or in writing with a Panelist before the Hearing except as follows: (a) either Hearing Principal may submit written questions to the Presiding Panelist regarding procedural aspects of the Hearing, as long as a copy of the communication is simultaneously provided to the other Hearing Principal; and (b) pre-Hearing communications with the Presiding Panelist on procedural aspects of the Hearing only are permitted as long as both Hearing Principals are present either in person or by telephone. The Presiding Panelist shall promptly answer questions reasonably related to Hearing procedures, but is not required to respond to questions concerning matters adequately covered in this Article or in supplemental Rules. The Presiding Panelist shall respond in writing to written questions, and simultaneously provide a copy of its written response to both Hearing Principals.

Either Hearing Principal may request, in writing delivered to the Presiding Panelist and the other Hearing Principal, no later than two (2) business days before the date scheduled for its Hearing, a continuance for up to thirty (30) days. Except for the Contestant's first request for a continuance, which the Presiding Panelist shall grant as a matter of course, the Presiding Panelist has the discretion to grant continuances based on such factors as the reason for the continuance, the number of continuances already granted, hardship to either Hearing Principal in granting or denying the continuance, and the potential harm to the Association by extending the Enforcement Action.

12.6. Contestant's Failure to Appear at Hearing. To pursue its contest of the proposed Enforcement Action, the Contestant must be present at the time and place set for the Hearing in the Enforcement Notice. Failure by a Contestant to appear when and where required constitutes its waiver of its right to a Hearing under this Article, and the Board may proceed with the Enforcement Action, unless: (a) the Contestant delivers to the Presiding Panelist a written explanation of its absence, and a request to appear at the next Hearing Date; and (b) the Panel determines that the explanation provides reasonable grounds for the Contestant's absence. If the Contestant fails to appear at the next scheduled Hearing, the Panel will not grant a third opportunity, and the Contestant is deemed to have waived its right to a Hearing under this Article, and the Board may proceed with the Enforcement Action.

12.7. Hearing Procedures.

12.7.1. Burden of Proof. The Association bears the burden of demonstrating: (a) beyond a reasonable doubt that the Default that is the basis for the proposed Enforcement Action exists; and (b) that the Enforcement Action is reasonable under the circumstances. The Panel shall recommend to the Board that the proposed Enforcement Action not be taken if fewer than all three Panelists agree the Association has met its burden.

12.7.2. Contestant's Procedural Rights at a Hearing. The Contestant has the right to:

- (a) be represented by a legal advisor;
- (b) record the proceedings to the same extent permitted under Section 5.12.9 for a Members meeting or Board meeting; and
- (c) be given the names and positions of the Person(s) serving on the Panel.

12.7.3. Testimony; Cross-Examination; Objections The Hearing Principals may submit evidence in support of their cases that includes testimony by witnesses (including experts), exhibits and signed statements of absent witnesses, photographs, records, other documents and other items, as long as they are relevant and material to the proposed Enforcement Action. Formal rules of evidence that would apply in a court proceeding, including hearsay rules, do not govern Hearing proceedings. The Presiding Panelist should follow a common sense, liberal approach to admitting evidence. Either Hearing Principal may object to the relevance, materiality or probity of evidence, and raise questions about the credibility of a witness. The Presiding Panel determines whether to admit evidence or testimony, but, in general, objections of the Hearing Participants will simply be noted and considered by the Panelists in making their findings of fact. Witnesses do not testify under oath. Neither Hearing Principal has a right of cross-examination, but is permitted to challenge a witness's credibility or capacity, by pointing out to the Panel such things as inconsistencies, bias or errors in testimony, and introduce evidence in support of the challenge. Panelists may question witnesses directly at any time during their testimony. Neither Hearing Principal shall knowingly introduce evidence or allow evidence to be introduced on its behalf, that contains a misstatement or omission of a material fact that makes the evidence false or misleading.

12.7.4. Who May Attend. Except to the extent both Hearing Principals agree, Hearings are not open to the public or Members or Directors other than: (a) if the Contestant is a Related User, the Member that owns the Related User's Lot; (b) member's of the Contestant's immediate household; (c) the Person serving as a Contestant's advisor (who does not have to be a lawyer); and (d) persons who will be called as witnesses. The chairperson of the Panel may require witnesses to be present only while testifying.

The Hearing Principals and others present at the Hearing shall conduct themselves with the level of civility and decorum expected in a business office setting. Profanity and abusive language are not permitted. If anyone repeats or continues inappropriate behavior after a warning from the Presiding Panelist, the Presiding Panelist may require that Person to leave the Hearing room or may halt proceedings until proper order is restored. If the Presiding Panelist believes the circumstances warrant, he or she may adjourn the Hearing and continue it to another date.

12.7.5. Presentation of Evidence and Arguments. The Presiding Panelist begins the Hearing by announcing the names of the Hearing Principals, and then asks them to identify themselves and other Persons in the Hearing room, who, if requested, will complete a sign-in sheet with their names addresses and phone numbers, and in what capacity they are present. The Presiding Panelist then introduces him or herself and the other Panelists, and states ground rules the Presiding Panelist considers appropriate. The Association presents its case first. The Association must cite the specific provisions of the Governing Documents alleged to have been violated, and the specific provisions authorizing the proposed Enforcement Action. The Association must then present its evidence. When the Association Representative is finished, the Contestant makes its case, which may include challenging the validity or applicability of the provisions of the Governing Documents that are the basis of the proposed Enforcement Action; introducing new evidence that exonerates the Contestant or excuses the Contestant's alleged violation of the Governing Documents based on mitigating circumstances, and/or challenging the Association's evidence and witnesses. After hearing both sides, the Panel may, but need not, offer both Hearing Principals a chance to rebut the other's case. If a Panelist has information about the case independent of the evidence presented, and he or she believes that information may influence its vote or the vote of another Panelist, the Panelist shall, before the Hearing is adjourned, disclose that information to the Hearing Principals and the other Panelists, and give each Hearing Principal an opportunity to comment on it.

12.7.6. Finding of Fact and Recommendation. The Presiding Panelist adjourns the Hearing when the actions described in Section 12.7.6 are completed. After the Hearing is adjourned, the Panelists privately discuss among themselves and weigh the credibility, relevance and probity of the evidence, the applicability of the cited provisions of the Governing Documents, the severity of the Enforcement Action under the circumstances, the Enforcement Actions taken in the past for similar violations of the Governing Documents, and other matters the Panelists consider relevant to their recommendation. The Panelists then vote to make a positive or negative recommendation to the Board on the

Enforcement Action. The Panel shall recommend to the Board that the proposed Enforcement Action not be taken if fewer than all three Panelists agree the Association has met its burden of proof. After the vote, the Presiding Panelist delegate to him or herself or another Panelist the task of making written findings of fact on which the recommendation is based. The Panel shall deliver copies of its findings of fact within ten (10) days after the Hearing to the Hearing Participants and the Board. The written findings of the Panel shall be kept in the Association's non-public records.

12.7.7. Board Action on Panel's Recommendations. The Board shall at its next meeting, consider the Panel's findings of fact and recommendations, and vote on whether to accept or reject the recommendations. If permitted under the CIOA and the RNCA, the Board shall deliberate in Executive Session, but its final vote shall be in open session. If the Board votes to reject the Panel's recommendations, it shall include in the minutes a brief statement explaining why. If the Board votes in favor of the proposed Enforcement Action, the Association may carry it out. If the Board votes against the proposed Enforcement Action: (a) the Association is prohibited from carrying out the Enforcement Action (or any less stringent Enforcement Action); and (b) except as provided below, the Association may not again declare a Default or propose another Enforcement Action against the Contestant growing out of the same facts and circumstances that were the subject of the Hearing, even if based on a different provision of the Governing Documents or new information. However, nothing prohibits the Association from: (x) pursuing a Claim under Section 12.7.9 with respect to the Hearing, or (y) declaring a separate Default or proposing a new Enforcement Action against the Contestant based on an alleged violation of the same or different provisions of the Governing Documents arising from a separate incident.

12.7.8. No Right of Appeal; Right to Make a Claim; Other Remedies. There is no appeal, as such, of the Board's decision by either Hearing Principal, but either Hearing Principal may bring a Claim against the other or the Association under Article 13 based on an alleged material violation of the procedures of this Article 12 by one or more of the Panelists or the other Hearing Principal. Further, subject to the limitations of Article 13, nothing in this Article 12 limits the right of the Association or the Contestant to exercise other legal or equitable remedies available to it in challenging the findings of fact and/or the Board's decision regarding the Enforcement Action (but the Association may not exercise any legal or equitable remedy that would constitute an Enforcement Action unless it has first obtained a court order allowing it to do so.

Article 13. Mandatory Dispute Resolution

13.1. Purpose. In compliance with Section 16.9 of the Declaration and of the CIOA, this Article constitutes the written policies of the Association's procedures to address disputes between or among the Association, Declarant and/or one or more Members, by making use of mediation or arbitration as alternatives or preconditions to filing a complaint in a court of law. The purpose of this Article is to encourage amicable resolution of disputes without the delay and emotional and financial costs of litigation. If two or more Disputants cannot resolve a dispute between or among themselves through the normal course of business and communications, further action to resolve the dispute shall start by asserting a Claim under this Article. "**Disputants**" means Declarant, the Association, the Members, design professionals, builders (including their subcontractors and suppliers) and other persons not otherwise subject to the Governing Documents but who agrees to submit to this Article. No Disputant may submit bring legal proceedings in a court of law to enforce a Claim unless and until the procedures in this Article have been complied with.

13.2. Claims. Except as expressly excluded in Section 13.4, "**Claim**" means a claim, dispute or other controversy arising out of or relating to:

- (a) an agreement or contract for sale and purchase of a Unit between Declarant and a Member;
- (b) the property that is the subject of an agreement or contract or the Lot or the Common Elements (the "**Disputed Property**");

- (c) the sale or purchase of the Disputed Property;
- (d) the interpretation, application or enforcement of these Bylaws, the Declaration or the other Governing Documents;
- (e) land development, design and/or construction of the Improvements in the Development (including alleged defects);
- (f) the rights and obligations of a Disputant under these Bylaws, the Declaration or the other Governing Documents; and/or
- (g) the Design Standards and the procedures to enforce them.

13.3. Exclusions. Unless Declarant and the Members to which are allocated at least eighty percent (80%) of the Votes in the Association agree otherwise, the following are not Claims, and are not subject to this Article:

- (a) a claim by the Association against a Member to enforce the collection of Assessments;
- (b) a claim by the Association for temporary or permanent injunctive or other ancillary relief the court deems necessary to enable the Association to enforce the Declaration to prevent or reduce the risk or the degree of harm from an imminent threat to the peace, health or safety of the Development;
- (c) a claim by a Member challenging the actions of the Association, the Board, one or more Directors, a committee of the Board, one or more Officers or Declarant with respect to the enactment and application of standards or Rules;
- (d) a claim between or among Members that does not arise under the Governing Documents and does not include the Association, the Board, one or more Directors, a committee of the Board, one or more Officers or Declarant as a Disputant; and
- (e) a claim involving (i) a First Mortgagee, (ii) casualty, condemnation or (iii) personal injury or loss or damage to property where the claim exceeds \$15,000.

13.4. Bringing a Claim; Notice. A Disputant alleging a Claim (“**Claimant**”) against another Disputant (“**Respondent**”) shall submit at the same time all Claims of which it is aware that arise out of the same set of operative facts, by written notification delivered to each Respondent, with a copy to the Board (if not a Disputant), stating plainly and concisely:

- (a) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;
- (b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and
- (c) the specific relief and/or proposed remedy sought.

The Claimant shall initiate the Claim within a reasonable time it arises, but in no event after the date when: (x) the Claimant is no longer Declarant or Member; (y) the Respondent is no longer Declarant or a Member; or (z) legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or repose.

13.5. Counterclaims. If a Respondent is aware of any Claim against the Claimant or a co-Respondent that arises out of the same set of operative facts as the Claimant's Claim, the Respondent must submit the Claim to the Claimant and each co-Respondent and the Board, in the same manner as for an initial claim, no later than fifteen (15) days after receipt of the initial Claim. If additional Claims are submitted under this Section, then as to each such Claim, the Person bringing the Claim is a Claimant and each Person against which the Claim is brought is a Respondent. All Claims properly brought under this Section shall be consolidated and considered together for purposes of mediation and arbitration, and references to "Claim" in Sections 13.6 through 13.8 shall refer collectively and respectively to the initial Claim and related Claims filed under this Section.

13.6. Right to Inspect. After receipt of a Claim based on the land development, design and/or construction of Improvements in the Development, and before the Claimant starts the proceedings described below, the Respondent and its representatives may enter onto the Lot or portion of the Common Elements related to the Claim (subject to the prior approval of the Owner of each Lot to be entered, not to be unreasonably withheld or delayed), to conduct an inspection, take measurements and photographs and conduct tests (but not invasive tests, unless the Claimant provides adequate insurance to the Owner for loss, damage or injury, including environmental impairment or exacerbation of an existing condition). The Claimant shall take care to: (a) not damage Improvements on the property being entered; (b) minimize disruption or inconvenience to the occupants of the property being inspected; and (c) restore the property to its condition prior to the inspection (or, at the request of the property owner, reimburse the property owner for the cost of restoration). The inspecting Claimant shall indemnify, defend and hold harmless the Owner and occupants of the property being inspected against liability, claims, demands, losses, costs and damages (including Legal Costs) resulting from the Claimant's investigation.

13.7. Good Faith Negotiations. The Disputants (together with their attorneys and other advisors) shall make reasonable efforts to confer in Person and work to resolving the Claim by good faith negotiation.

13.8. Mediation.

13.8.1. If the Disputants cannot resolve a Claim through negotiation within thirty (30) days after the date the Claim was submitted (or longer, if the Disputants agree between or among themselves), the Claimant has thirty (30) more days to submit the Claim to an independent mediation service acceptable to all Disputants. Claimant's failure to submit its Claim to mediation or to appear at the scheduled time and place for mediation constitutes Claimant's waiver of its Claim for all purposes, including subsequent legal action on the Claim by or on Claimant's behalf in a court of law, and the Claimant's release and discharge of the Respondent from liability to Claimant on account of the Claim. In that event the Respondent may require the Claimant to enter into a binding written agreement of settlement and release.

13.8.2. If the Disputants cannot settle a Claim within thirty (30) days after submitting it to mediation (or longer, if the Disputants agree between or among themselves), the mediator shall terminate the mediation proceedings and issue to the Disputants a notice to that effect. Within ten (10) days after delivery of the notice of termination of mediation, each Disputant shall deliver to the other a final written settlement offer. If the Claimant fails to timely submit a settlement offer, the Claimant's original Claim stands as its settlement offer. If the Respondent fails to timely submit a settlement offer, Respondent is deemed to have made a "zero" or "take nothing" settlement offer.

13.8.3. Unless the Disputants agree otherwise as part of their mediation settlement, each Disputant bears its own costs, including Legal Costs, but the Disputants share equally the fees charged by the mediator and filing fees and costs of conducting the mediation proceeding.

13.8.4. If the Disputants resolve a Claim through mediation, the mediator shall document the settlement in writing, in the form of an agreement which the Disputants shall sign. The mediation agreement shall be, and shall provide by its terms that it is, enforceable in any court of competent jurisdiction in the County. If a Disputant fails to abide by the terms of the mediation agreement, any other Disputant may file suit to enforce the mediation agreement without further need to comply with

this Article. The successful Disputant in an action to enforce the mediation agreement is entitled to recover its Legal Costs from the unsuccessful Disputant.

13.9. Arbitration.

13.9.1. A Claimant has fifteen (15) days after the Disputants submit (or are deemed to have submitted) their settlement offers under Section 13.7.2, to deliver to Respondent a notice of arbitration of the Claim, and to file the Claim under the Arbitration Procedures stated in Exhibit A, attached. A Claimant's failure to give timely notice to the Respondent, to submit the Claim to arbitration or to appear at the scheduled time and place for arbitration constitutes Claimant's waiver of its Claim for all purposes, including subsequent legal action on the Claim by or on Claimant's behalf in a court of law, and the Claimant's release and discharge of the Respondent from liability to Claimant on account of the Claim. In that event the Respondent may require the Claimant to enter into a binding written agreement of settlement and release.

13.9.2. If a Claim is submitted to arbitration, and the rights or obligations of another Person not a Disputant may be affected by the outcome of the arbitration, the Disputants shall join the non-Disputants as additional Disputants in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidate all arbitrations. If the Disputants fail to join a non-Disputant, the non-Disputant may voluntarily join the arbitration by submitting a request to the arbitrator, and the arbitrator shall determine whether the non-Disputant should be joined.

13.9.3. The arbitrator's ruling is final and binding. The ruling is, and by its terms shall so provide, enforceable in any court of competent jurisdiction in the County. If a Disputant fails to abide by the terms of the arbitration ruling, any other Disputant may file suit to enforce the arbitration ruling without further need to comply with this Article. The successful Disputant in an action to enforce the arbitration ruling is entitled to recover its Legal Costs from the unsuccessful Disputant.

13.10. Specific Performance. This Article is specifically enforceable under the applicable arbitration laws of the State of Colorado.

13.11. Utilization of Funds Resulting from the Cause of Action. If the Association receives funds as a result of a settlement, mediation, arbitration or judgment of a Claim, the Association shall first pay the costs and expenses incurred in prosecuting the Claim (to the extent not paid by the Respondent), and shall then: (a) deposit the remaining proceeds in a special, interest-bearing account; and (b) utilize those proceeds only to perform remedial or repair work on the conditions that were the subject of the Claim or otherwise for purposes of remedying the Claim.

13.12. Exclusive Remedy. The provisions contained in this Article are the exclusive remedy the Association and other Disputants have against Declarant for a Claim. Should a Disputant start litigation or other action against another Disputant, in violation of this Article, the Disputant starting litigation shall reimburse the other Disputant for the other Disputant's Legal Costs in seeking dismissal of the litigation or action.

13.13. Effect on Other Laws. The provisions of this Article are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by Association, as the term "action" is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both this Article and C.R.S. § 13-20-801 *et seq.*

Article 14. Books and Records; Financial Statements

14.1. Presumption of Accuracy of Minutes. Minutes or similar records of the meetings of Members or the Board, when signed by the Secretary or acting Secretary of the meeting, are presumed to truthfully evidence the matters they set forth. A recitation in the Minutes that Notice of the meeting was properly given is prima facie evidence that the Notice was given.

14.2. Association Records. The Association shall maintain Association Records in written or electronic or other form capable of conversion into written form within a reasonable time. **“Association Records”** means the items referred to in this Section and in Section 14.4.

14.3. Association Records to Be Kept at Association’s Principal Office. The Association shall keep the Association Records listed below at its principle office.

- (a) Governing Documents;
- (b) Board resolutions relating to the characteristics, qualifications, rights, limitations, and obligations of Members;
- (c) minutes of Members' meetings, and records of actions taken by them in lieu of a meeting, for the past three years;
- (d) written communications within the past three years to Members generally as Members;
- (e) list of the names and business or home addresses of Directors and Officers then holding office;
- (f) most recent annual report; and
- (g) financial audits or reviews conducted pursuant to Sections 14.9 and 14.10 during the immediately preceding three (3) years.

14.4. Permanent Association Records. The Association shall keep the following Association Records permanently:

- (a) minutes of Members meetings and Board meetings;
- (b) records of actions taken by Members or Directors by written ballot or written consent in lieu of a meeting;
- (c) records of actions taken by a committee of the Board pursuant to the authority delegated to it (including the Design Review Committee), unless the Board later formally ratifies or takes the same action, and
- (d) records of waivers of notices of Members meetings, Board meetings and meetings of committees of the Board (including the Design Review Committee).

14.5. Members List. Without the Board’s prior approval, no one shall obtain or use the Members List: (a) to solicit money or property (other than to solicit Members’ votes before a Members meeting; (b) for a commercial purpose; (c) for sale; or (d) for another purpose unrelated to a Member’s interest as a Member.

14.6. Association Records Unconditionally Available to Members. The Association shall, within ninety (90) days after assuming control from Declarant, make the following information available to Members and First Mortgagees at their request:

- (a) the name of the Association, the Development and the Association's designated agent or management company, if any (and any change to any of the foregoing within ninety (90) days after the change occurs);

- (b) a physical address and telephone number for both the Association and its designated agent or management company, if any (and any change to any of the foregoing within ninety (90) days after the change occurs);
- (c) the date, book number and page number for the Recording of the Original Declaration;
- (d) the date the Association's fiscal year starts;
- (e) the current Budget;
- (f) a list of the currently levied General and Special Assessments per Lot;
- (g) the annual financial statements for the most recently available fiscal year, including the amount in the Reserve Fund;
- (h) the results of the most recently completed financial audit or review;
- (i) a list of insurance policies carried by the Association, including property, general liability, association director and officer professional liability, and fidelity policies, with the names of the insurers, policy limits, deductibles, additional named insureds, and expiration dates for each listed policy;
- (j) copies of the Governing Documents;
- (k) copies of the minutes of Board meetings and Members meetings for the preceding fiscal year; and
- (l) the Association's responsible governance policies adopted under the Act and Section 7.10 of the Declaration.

The Board has the widest possible latitude in methods and means of disclosure, as long as the information listed above is readily and conveniently available to Members at no cost. For example, the Association may disclose information by posting it on a web site with accompanying notice of the web address via first-class mail or e-mail; maintaining a "literature table" or binder at the Association's principal place of business; or mail or personal delivery. The Association's cost of distributing the foregoing information is a Common Expense.

14.7. Association Records Conditionally Available to Members and First Mortgagees. The Board shall make Association Records (other than the Members List) reasonably available for Members and First Mortgagees (or their authorized agents) to examine and copy. "Reasonably available" means, for purposes of this Section 14.7, available during normal business hours after five (5) business days' notice, or at the next regularly scheduled Board meeting within thirty (30) days after the request, but only to the extent that:

- (a) the request is made in good faith and for a proper purpose;
- (b) the request describes with reasonable particularity the Association Records sought and the purpose of the request; and
- (c) the records are relevant to the purpose of the request.

The Association may require reimbursement of its actual copying cost per page, before giving a Member or First Mortgagee copies of the Association Records requested. This Section 14.7 does not affect:

- (iv) a Member's or First Mortgagee's right to inspect records:

(A) under the RNCA governing the inspection of lists of members before the annual meeting; or

(B) in the course of litigation with the Association, to the same extent as any litigant; or

(v) the power of a court to compel the production of Association Records for examination on proof by a Member or First Mortgagee of proper purpose.

14.8. Association's Financial Statements. The Board shall cause financial statements for the Association to be prepared using generally accepted accounting principles on the cash or tax basis of accounting.

14.9. Review of Association's Financial Statements. The Board may, and, if requested by the Members or First Mortgagees of at least thirty-three and one-third percent (33-1/3%) of the Lots, shall, cause the books and records of the Association to be reviewed, using statements on standards for accounting and review services, by an independent and qualified Person selected by the Board who need not be a certified public accountant, but shall have at least a basic understanding of the principles of accounting as a result of prior business experience, education above the high school level, or bona fide home study.

14.10. Audit of Association's Financial Statements. The Board may, and, if requested by the Members or First Mortgagees of at least thirty-three and one-third percent (33-1/3%) of the Lots, with respect to a year when the Association's revenues or expenditures are \$250,000.00 or more, shall, cause the books and records of the Association to be audited, using generally accepted auditing standards, by a certified public accountant selected by the Board.

14.11. Members' Right to Copies of Reviews and Audits. The Board shall, upon request, make available to Members and First Mortgagees the results of a review or audit within thirty (30) days after completion.

Article 15. Amendments

15.1. Amendment of Articles by Board without Member Approval.

The Board may adopt, without Member approval, amendments to the Articles to:

(a) delete the statement of names and addresses of the incorporators or of initial Directors;

(b) delete the statement of the name and address of the initial registered agent, if a statement of change of name and address of the registered agent is on file in the records of the Secretary of State of Colorado;

(c) delete the statement of the initial principal office address, if a statement of change in that address is on file in the records of the Secretary of State of Colorado;

(d) change the Association's name by substituting the word "corporation", "incorporated", "company", or "limited", or abbreviations of those words, or by adding, deleting, or changing a geographical attribution;

(e) change the Association's name, if necessary, in connection with the reinstatement of a nonprofit corporation; or

(f) make other changes expressly permitted by the RNCA without Member action.

15.2. Amendment of Articles by Board and Members. The Board or the Members representing at least ten percent (10%) of all of the Votes entitled to be cast on an amendment to the Articles may propose an amendment to the Articles for submission to the Members. The proposing Directors or the proposing Members may condition the effectiveness of the amendment on whatever basis, if any, they elect. For

the amendment to become effective, it shall satisfy the conditions for effectiveness imposed by the proposing Directors or the proposing Members, and, unless those conditions impose a more stringent standard:

15.2.1. the Board shall recommend its adoption to the Members, unless: (i) the Members proposed the amendment, or (ii) the Board determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the Members with the amendment;

15.2.2. the Association shall give Member Notice to the Members entitled to vote on the amendment at a Members meeting that states that the purpose, or one of the purposes, of the meeting is to consider the amendment, and that includes a copy or a summary of the amendment or states its general nature;

15.2.3. if the Board or the Members seek to have the Members approve the amendment by written consent or ballot in lieu of a Members meeting, the material soliciting the approval shall include a copy or summary of the amendment; and

15.2.4. unless a different percentage is required under these Bylaws, the Declaration or by Law, a majority of the Members at Members entitled to vote at meeting where a quorum is present shall have voted in favor of the amendment

15.3. Restatement of Articles. by the Board. The Board may restate the Articles without Member approval, unless the restatement includes one or more amendments to the Articles that require Member approval, in which case the restatement shall be adopted as provided in Section 15.2.

15.4. Bylaw Amendments.

15.4.1. By the Members. A majority of the Members present and voting, in Person or by Proxy, at a regular or special Members meeting called for that purpose at which a quorum is present, and for which proper Member Notice was provided, may amend these Bylaws.

15.4.2. By the Board. The Board may, without Member approval, amend these Bylaws unless:

- (a) the RNCA, the Articles, the Declaration or these Bylaws prohibits the Board from doing so or reserves that power exclusively to the Members in whole or part; or
- (b) the amendment has the effect of fixing a lesser or greater quorum requirement or a greater voting requirement for Members.

15.5. Bylaw Changing Quorum or Voting Requirement for Directors. An amendment to these Bylaws that has the effect of fixing a greater quorum or voting requirement for the Board may be amended:

- (a) by the Members only, if the provision being amended was initially adopted (or amended) by the Members; or
- (b) by the Members or the Board, if the provision being amended was initially adopted (or amended) by the Board.

Further, a Bylaw adopted or amended by the Members that fixes a greater quorum or voting requirement for the Board may provide that it may be amended only by a stated vote of either the Members or the Board. If the Board wants to adopt or amend a Bylaw to change its quorum or voting requirements, the board shall follow the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Article 16. Miscellaneous

16.1. Notices. Notices to the Association or the Board shall be delivered to the office of the Managing Agent, or, if there is no Managing Agent, to the office of the Association, or to whatever address the Board designates by Notice to the Members. Except as otherwise provided, all Notices to Members shall be mailed to the Members' addresses as they appear in the Association's records. Notices are deemed given when mailed or transmitted, except notices of changes of address, which are deemed given when received.

16.2. Fiscal Year. The current fiscal year ends December 31, however, the Board may establish the fiscal year of the Association from time to time.

16.3. Office. The principal office of the Association shall be within the Development at the manager's office or where the Board designates.

16.4. Successors and Assigns. Each provision of these Bylaws extends to, binds and benefits the Association, the Members and Declarant and their respective heirs, legal representatives, successors and permitted assigns, and runs with the land and binds persons having a right, title or interest in all or part of the Real Property, and their respective heirs, legal representatives, successors, and assigns.

16.5. Rules of Construction. In interpreting these Bylaws, the following rules apply, unless these Bylaws expressly provide otherwise in a particular case:

16.5.1. The provisions of these Bylaws shall be liberally construed to effectuate their purpose of creating a uniform plan for the development of the Lots and promoting and effectuating the fundamental concepts stated in the Article 1.

16.5.2. If a conflict arises among the terms of the Governing Documents, or between the Governing Documents and the CIOA: (a) these Bylaws govern the Rules, but only to the extent that the Rules, if applied, would violate a specific provision in these Bylaws; (b) the Declaration governs these Bylaws, but only to the extent that these Bylaws, if applied, would violate a specific provision in the Declaration; (c) the CIOA governs the Declaration, but only to the extent that the Declaration, if applied, would violate a specific provision in the CIOA.

16.5.3. To the extent the provisions of CIOA conflict with provisions in the RNCA or other existing or future laws of the State of Colorado, the provisions of CIOA govern.

16.5.4. The headings of Sections, Exhibits and Schedules are for convenience only and do not limit, expand or construe the contents of the Sections, Exhibits or Schedules. References to Sections, Schedules and Exhibits are to sections, schedules and exhibits included in or attached to these Bylaws unless otherwise specified. Schedules and Exhibits attached to these Bylaws are incorporated in these Bylaws by reference.

16.5.5. Whenever context requires: (a) the singular includes the plural, and vice versa (and in that connection, when "(s)" is added to the end of a word, it means either or both the singular and plural form of that word, for example, "Person(s)" means "the Person or persons"); and (b) the masculine includes the feminine and neuter genders, and vice versa.

16.5.6. The words "including" or "such as", or words of similar import do not limit the statement to which they refer to specific items, whether or not language of non-limitation (such as "without limitation", or "but not limited to") is used, but include all items that reasonably fall within the broadest scope of the statement.

16.5.7. The word "Person" means a natural Person or legal entity.

16.5.8. The expression "and/or" means either or both, for example, "x and/or y" means "either x or y, or both."

16.5.9. When an obligation is imposed on a Person to take an action under these Bylaws or the other Governing Documents, but no time frame is specified, the Person shall take the action promptly.

16.5.10. When a Person's consent or approval is to be given or denied, unless otherwise stated, it shall be given or denied in advance in writing and shall not be unreasonably delayed, conditioned or withheld.

16.5.11. If a Person is authorized to take an action "at any time," it is also authorized to take that action from time to time.

16.6. Business Days. If a date specified in these Bylaws for taking an action or giving notice, or for the occurrence of an event or satisfaction of a condition is not a business day, then the date is postponed to the next business day. A "business day" means a day other than Saturday, Sunday or a holiday observed by national banks.

16.7. Governing Law. These Bylaws are governed by the internal laws of the State of Colorado without regard to the laws regarding conflicts of laws.

16.8. Severability. If a court determines all or part of a provision of these Bylaws is invalid or unenforceable as written, the parties agree to limit the provision so as to render it valid and enforceable or, it is not feasible to do so, to delete it from these Bylaws, as circumstances require, to enable the court to construe the provision in question as if it had originally appeared in these Bylaws in its limited form, or as if it had never been included in the first place, as the case may be. The invalidity of a provision of these Bylaws does not impair or affect the validity, enforceability or effect of the rest of these Bylaws.

16.9. Unavoidable Circumstances. If the Association, a Member of Declarant fails to timely perform its obligations under these Bylaws as a result of Unavoidable Circumstances, then the failure does not constitute a default and the time for performance provided for in these Bylaws is extended by the period of delay resulting from Unavoidable Circumstances. "**Unavoidable Circumstances**" means events or circumstance beyond the party's reasonable control, including so-called "acts of God," fire, flood, other natural calamities, accidents, unusual delays in deliveries, unavoidable casualties, labor disputes, strikes, lockouts or picketing (legal or illegal), wars, riots, acts of terrorism, changes in or unexpected interpretations of Laws, adverse weather conditions, condemnation or other actions of Governmental Authorities or utility companies or shortages of labor, fuel, power or materials. A Member may not claim unavailability of funds as an Unavoidable Circumstance unless the lack of funds results from the Association's failure to pay the Member funds to which the Member is entitled.

16.10. Nonwaiver. Unless otherwise expressly provided in these Bylaws, a party's waiver of a condition precedent to its performance or the other party's breach of these Bylaws does not constitute a waiver of another condition precedent or breach (whether preceding or succeeding, or similar or different in nature). By accepting payment or performance from a breaching party, the non-breaching party does not waive the breach, even if the breach was known when it accepted payment or performance. Failure or delay in exercising a right arising out of a party's breach of these Bylaws does not waive the breach, limit or prevent the non-breaching party from later exercising its rights or modify the terms of these Bylaws, even if the breach continues or is repeated.

16.11. Legal Significance of Association's Approval or Consent. The Association's review, approval and consent powers are for its benefit only, and its review, approval or consent does not constitute a representation concerning legality, safety or other matters.

16.12. No Restrictions on Freedom of Speech. No provision, covenant, condition or restriction contained in these Bylaws may impair the rights guaranteed by the First Amendment to the Constitution of the United States, the Constitution of the State of Colorado, or may be applied to discriminate against an individual in a manner prohibited by Laws.

Article 17. Matters Relating to Declarant.

17.1. Special Declarant Rights. Declarant has reserved to itself and successor declarants in the Declaration the following rights (“**Special Declarant Rights**”), which, unless otherwise provided in this Declaration, may be exercised without the consent or approval of the Association, the Owners or, except as otherwise provided below, the City:

(a) construct or install Improvements indicated on the Plat or Map until Declarant has completed all those Improvements, and any warranty period associated with them expires;

(b) install, construct, maintain, move and remove sales offices, management offices, signs advertising the Development and models within Lots owned by Declarant and in the Common Elements until Declarant transfers title to the last Lot it owns to someone other than a successor Declarant;

(c) use, and permit others to use, easements through the Common Elements for ingress and egress and otherwise, to make Improvements in the Development and/or discharge Declarant’s obligations under this Declaration or the Act, until Declarant has no further rights or obligations under this Declaration;

(d) appoint and remove Directors and Officers (other than Directors elected by the Owners under Section 17.1.3 and Officers that would not have been appointed but for the vote of those Directors) until the end of the Declarant Control Period;

(e) appoint and remove members of the Design Review Committee until the earlier of the date that the Design Review Committee approves the plans for the last residence on the last Lot, or that Declarant transfers title to all the Lots (other than to a successor Declarant); and

(f) maintain Signs on the Common Elements and in Lots owned by Declarant advertising the Development and the availability of Lots for sale and Lots or space in Lots for lease until Declarant transfers title to the last Lot it owns to someone other than a successor Declarant.

17.1.2. Declarant Control Period. “**Declarant Control Period**” means the period beginning the date the Declaration was Recorded and ending on the earlier of: (a) sixty (60) days after Declarant has conveyed to Owners (other than a successor Declarant) title to seventy-five percent (75%) of the sum of the existing Lots; or (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business. Declarant may voluntarily relinquish its power as the Declarant before the end of the Declarant Control Period by Recording a notice to that effect, and, in doing so, may, if provided in its notice, require that during the remainder of the Declarant Control Period, specified actions of the Association or Board are not effective until the Declarant approves them.

17.1.3. Owners; Right to Elect Directors during Declarant Control Period. During the Declarant Control Period, the Owners other than Declarant have the right to elect one or more Directors on the following schedule:

(a) within sixty (60) days after the conveyance to Owners (other than a successor Declarant) of title to twenty-five percent (25%) of the sum of the existing Lots, at least one Director but no fewer than twenty-five percent (25%) of the Directors; and

(b) within sixty (60) days after the conveyance to Owners (other than a successor Declarant) of title to fifty percent (50%) of the sum of the existing Lots, no fewer than thirty-three and one-third percent (33-1/3%) of the Directors.

17.1.4. Standard of Care for Directors and Officers Appointed by Declarant. Directors and Officers appointed by Declarant shall, in the performance of their duties during the term of their appointment, exercise the care required of fiduciaries of the Owners.

17.1.5. Transfer of Special Declarant Rights. Declarant may, without the approval of the Association or the Owners, transfer some or all of the Special Declarant Rights to a successor Declarant by a recorded instrument evidencing the transfer signed by Declarant and the successor Declarant.

17.1.6. Declarant's Liability for Initial Common Expenses. Until the Association levies the first General Assessment (which may, but need not be, before the end of the Declarant Control Period), Declarant pays one hundred percent (100%) the Common Expenses.

17.1.7. Declarant Not Liable for Funding Reserve Fund. Declarant is not responsible in its capacity as Declarant for funding or contributing to the Reserve Fund; however, Declarant is not relieved of its obligation to pay Assessments on the Lots it owns.

17.2. Declarant's Turn-Over of Governance and Control of Association to the Members.

17.2.1. First Members Meeting to Elect New Board. No later than the end of the Declarant Control Period, Declarant shall convene a Members meeting to elect a new Board. At the Members meeting at which a quorum is present, the majority of Members present at the meeting in Person or by Proxy (other than Declarant) shall elect the majority of the Directors, and the newly elected Directors constituting the majority shall be Members other than Declarant (and for that purpose, owners, managers, directors, officers and employees of Declarant are considered to be the Declarant). If Declarant, after making a reasonable effort, is unable to convene a Members meeting at which a quorum is present, Declarant may resign as Declarant after thirty (30) days notice to the Members. If Declarant fails to timely convene a Members meeting, the Members holding ten percent (10%) of the Allocated Interests in the Association may call the Members meeting.

17.2.2. Declarant's Turn-Over of Documents, Property and Control. Within sixty (60) days after the new Board is elected under Section 17.2.1, Declarant shall deliver to the Association possession and control of property belonging to the Members or the Association that had been in Declarant's possession or control, including:

- (a) the original or a certified copy of these Bylaws, the Declaration, the Articles, Rules, the minute book and other books and records of the Association;
- (b) an accounting of Association funds and financial statements, from the date the Association received the funds through the last day of the Declarant Control Period, audited (at no cost to the Association) by an independent certified public accountant and accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons why;
- (c) Possession or control of the Association's funds;
- (d) Declarant's tangible personal property (accompanied by an inventory) that Declarant previously represented as owned by the Association, or that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements;
- (e) a copy, for the Association's nonexclusive use, of plans and specifications the Declarant used in constructing Improvements in the Common Elements or elsewhere in the Development;
- (f) insurance policies then in force in which the Members, the Association or the Directors and Officers are named as insureds;
- (g) copies of certificates of occupancy issued with respect to Improvements in the Development installed or constructed by Declarant;

- (h)** copies of other permits issued by Governmental Authorities applicable to the Development that are currently in force or were issued within one year before the Turn-Over Date;
- (i)** unexpired written warranties from contractors, suppliers, and manufacturers;
- (j)** a roster of Members and First Mortgagees and their addresses and telephone numbers, if known;
- (k)** employment contracts to which the Association is a party; and
- (l)** service contracts to which the Association is a party or that obligate the Association or the Members to pay a fee to persons performing the services.

GLOSSARY OF DEFINED WORDS AND PHRASES IN BYLAWS

The Glossary is part of these By-Laws. Guidelines for interpreting these By-Laws can be found in Section. a Capitalized terms used in these Bylaws are defined below. Some of the words and phrases below are, as noted, defined in the Declaration, and repeated here for convenience. If the Declaration is amended to change those definitions, the definitions below are automatically amended to conform to the Declaration.

“Allocated Interests:” as defined in the Declaration, the Common Expenses and Votes allocated to each Unit in Article 3.

“Annual Survey:” defined in Section 9.2.a statement identifying a Director’s business, familial and other affiliations and interests that relate or could relate to the business and affiliations of the Association, in the form of Exhibit B, attached.

“Assessments:” as defined in Article 8 of the Declaration, assessments levied against Lots by the Association to collect funds from the Members to operate and manage the Development. Assessments may be General Assessments, Special Assessments, Limited Assessments or Default Assessments.

“Association:” the Grand Valley Estates Homeowners Association, Inc., a Colorado not-for-profit corporation formed on February 2, 2006.

“Association Records:” defined in Section 14.2.

“Association-Related Disputants:” the Association, the Directors, the Officers and the Association’s employees, agents and contractors, and the owners, managers, directors, officers, employees, agents and contractors of each of them.

“Association Representative:” defined in Section 12.1.

“Board; Board of Directors:” as defined in Section 7.1. of the Declaration, the board of directors elected by the Members or appointed by Declarant.

“Board Action:” defined in Section 9.2.

“Budget:” as defined in Section 8.1.2 of the Declaration, the estimated Common Expenses and the amount, if any, the Board determines should be paid into the Reserve Fund, and revenues from User Fees, Limited Assessments and other sources, as ratified by the Members.

“Bylaws:” these First amended and Restated Bylaws, as amended from time to time.

“CIOA:” the Colorado Common Interest Ownership Act, C.R.S. Sec 38-33.3-101, et. seq., as amended from time to time.

“City:” the City of Fruita, Colorado.

“Claim:” defined in Section 13.2.

“Claimant:” defined in Section 13.4.

“Common Elements:” as defined in Article 2 of the Declaration, the Real Property other than the Lots, and the Improvements located on, in or under them that are owned, leased or licensed to the Association or in which the Association has another interest. The portions of the Real Property constituting Common Elements are shown on the Map.

“Conflict of Interest:” defined in Section 9.2.

“Conflicted Board Action:” defined in Section 9.2.

“Conflicted Contract or Transaction:” defined in Section 9.2.

“Conflicted Director:” defined in Section 9.2.

“Contestant:” defined in Section 12.1.

“Contract or Transaction” defined in Section 9.2.

“County:” Mesa County, Colorado.

“Declarant:” Grand Valley Estates Development LLC, a Colorado limited liability company.

“Declarant Control Period:” as defined in Section 20.2.2 of the Declaration, the period beginning the date the Declaration is Recorded and ending on the earlier of: (a) sixty (60) days after Declarant has conveyed to Owners (other than a successor Declarant) title to seventy-five percent (75%) of the sum of the existing Lots; or (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business.

“Declaration:” First Amended, Restated and Supplemental Declaration of Restrictions, Covenants and Easements for Grand Valley Estates, Fruita, Colorado, recorded on September __, 2007, in Book ____, Page __, in the official real estate records of the Office of the Clerk and Recorder of Mesa County, Colorado, as supplemented and amended by the First Supplement to First Amended, Restated and Supplemental Declaration of Restrictions, Covenants and Easements for Grand Valley Estates, Fruita, Colorado; recorded on December __, 2007, in Book ____, Page __, in the official real estate records of the Office of the Clerk and Recorder of Mesa County, Colorado, the Map and all future amendments and supplements to either of them.

“Default:” defined in Section 11.1.

“Default Assessment:” as defined in Section 8.4 of the Declaration, fines, penalties, interest and other amounts payable to the Association by an Owner, including the reimbursement of expenses incurred by the Association in performing an obligation of the Owner under the Governing Documents or resulting from the non-compliance with the Governing Documents or the willful or negligent act or omission of an Owner or its Related User.

“Defaulting Member:” defined in Section 11.1.

“Delinquency Rate:” as defined in Article 2 of the Declaration, a rate of interest equal to twenty-one percent (21%) per annum, unless the Board sets a lower rate.

“Design Review Committee:” as defined in Section 11.3 of the Declaration, a committee appointed by the Board to establish Design Standards and to review plans for Improvements submitted to it by Owners to ensure compliance with the Design Standards.

“Development:” the planned community created on the Real Property under the Act and this Declaration, known as “Grand Valley Estates.”

“Director:” a Person serving as a member of the Board.

“Director Notice:” Notice required to be given by or on behalf of the Association or the Board to one or more Directors pursuant to Section 6.10.

“Disinterested Director:” defined in Section 9.2.

“Disputant:” defined in Section 13.1.

“Enforcement Action:” defined in Section 12.1.

"Entity:" a corporation, partnership, limited liability company, trust or other legally recognized type of organization

"Entity Representative:" an officer, manager, trustee of an Entity or other duly authorized Person specifically identified in the Entity's organizational documents or by proper resolution or other valid written authorization by the Entity.

"Executive Session:" defined in Section 6.12.10.

"Family Member:" defined in Section 9.2.

"Filing 1 Plat:" the Grand Valley Estates Subdivision, Filing 1 Recorded on June 13, 2006, in Book 4179, Pages 663-665, and subsequent modifications and/or resubdivisions.

"Filing 2 Plat:" the Grand Valley Estates Subdivision, Filing 2, Recorded on _____, 2007, in Book ____, Page ____, and subsequent modifications and/or resubdivisions.

"Filing 3 Plat:" the Grand Valley Estates Subdivision, Filing 3, Recorded on _____, 2007, in Book ____, Page ____, and subsequent modifications and/or resubdivisions.

"First Mortgagee:" as defined in Article 2 of the Declaration, the holder, insurer, or guarantor of a duly Recorded Mortgage that is subject only to liens of Governmental Authorities (including a lien for real property taxes), a portion of Assessments pursuant to the Act, and other liens made superior to first mortgages by Colorado law.

"Governing Documents:" These Bylaws, the Declaration, the Map, the Design Guidelines, the Articles, the Rules and other procedures, rules, regulations, restrictions, resolutions or polices adopted now or in the future under the foregoing documents.

"Governmental Authority:" the government of the United States, the State, the County and the City and other state or political subdivisions or governmental or quasi governmental entities or instrumentalities exercising executive, legislative, regulatory or administrative functions with jurisdiction over the Development, the Association or a Member.

"Hearing:" defined in Section 12.1.

"Hearing Principals:" defined in Section 12.1.

"Improvements:" buildings and other structures located anywhere in, on or under the Real Property, such as walls, fencing, outdoor lighting, benches, pipes, driveways, sidewalks, patios decks, antennae, satellite dishes, curb cuts, whether vertical or horizontal, above or below ground, and landscaping.

"Interest:" defined in Section 9.2.

"Interested Director:" defined in Section 9.2.

"Law" or "Laws:" statutes, laws and ordinances, orders, directions and requirements, implementing regulations, rules and guidelines, or the direction or order of a court or Governmental Authority in effect now or in the future.

"Legal Costs:" as defined in Section 16.7 of the Declaration, the reasonable attorneys' fees, court costs and litigation expenses incurred by a party in enforcing or defending its rights or taking other legal action or seeking legal advice under or in connection with the Act, the Declaration or the other Governing Documents or in pursuing claims or defending itself against claims by third parties in connection with the Act, the Declaration or other Governing Documents.

"Lot:" the plots of land shown on the Plat as numbered lots, other than Common Areas and streets and other areas dedicated to the City. Each Lot is a Unit, and each Unit is a Lot.

“Managing Agent:” the Person hired by the Association to perform management tasks on behalf of the Association.

“Map:” the common interest community map depicting the Real Property Recorded with, and forming a part of, this Declaration, and all amendments and supplements to it.

“Member:” as provided in Section 6.1 of the Declaration, a member of the Association. Every Owner is a Member. Every Member is an Owner.

“Member Notice:” Notice required to given by or on behalf of the Association or the Board to one or more Members under Section 3.11.

“Membership:” as defined in Section 6.1 of the Declaration, membership in the Association.

“Members List:” as defined in Section 3.9.

“Mortgage:” as defined in Article 2 of the Declaration, a Recorded consensual instrument, such as a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, or assignment of lease or rent intended as security, that creates a lien on a Lot or the Common Elements, as security for the payment and/or performance of other obligations, together with other security agreements constituting part of the same transaction.

“Notice:” notice required to be given by or on behalf of the Association or the Board to the Members or to Directors under the Governing Documents by one or more of the following methods, unless otherwise provided in these Bylaws or the other Governing Documents:

(m) personal delivery (that is, hand-delivered), effective upon receipt or refusal;

(n) nationally recognized over-night or express delivery service, effective on the next business day after sent;

(o) United States first class mail, postage prepaid, to the address provided by the addressee in the Association Records, effective the earlier of when received or three (3) days after deposit;

(p) facsimile to the fax number designated in writing by the Member with a written confirmation of receipt, effective at the date and time shown on the confirmation notice, unless after 5:00 p.m., in which case, effective on the next business day;

(q) e-mail, addressed to the e-mail address designated in writing by the Member, effective at the date and time shown on the confirmation notice, unless after 5:00 p.m., in which case, effective on the next business day; or

(r) as otherwise provided under the RNCA.

“Officer:” as defined in Section 7.4 of the Declaration, a President, Vice President, Treasurer and Secretary, and the persons the Board appoints to fill other offices it may elect to create under these Bylaws.

“Owner:” (a) the owner or owners of record of the fee simple title to a Lot; (b) the buyer of a Lot under a sales contract, but only if the buyer is in possession of the Lot; or (c) the tenant of a Lot under a lease with a term of forty (40) or more years, including renewal options. Declarant is the Owner of a Lot until the Lot is conveyed to another Person. A Person holding a security interest in a Lot, without more, is not an Owner of that Lot.

“Panel:” defined in Section 12.1.

“Panelist:” defined in Section 12.1.

“Person:” a natural person or an Entity.

“Plat:” collectively, the Filing 1 Plat, the Filing 2 Plat and the Filing 3 Plat.

“Presiding Panelist:” defined in Section 12.1.

“Procedural Guidelines:” defined in Section 12.1.

“Proposed Budget:” as defined in Section 8.1.2 of the Declaration, the Budget as proposed by the Board before the members ratify it.

“Proprietary Information:” defined in Section 9.2.

“Proxy:” a Person appointed by a Member to cast that Member’s Vote under Section 4.8.

“Proxy Appointment:” the appointment by a member of a Proxy, as evidenced by a written statement complying with Section 4.8.

“Real Property:” the real estate legally described on Exhibit A to the Declaration.

“Record:” (and its other forms, such as “Recorded” or “Recording,”) the act of the Recorder in putting a document in the official real estate records of the County.

“Record Date:” defined in Section 3.10.

“Recorder:” Office of the Clerk and Recorder of Mesa County, Colorado.

“Related Entity:” defined in Section 9.2.

“Related User:” as defined in Section 2 of the Declaration, :” A person who is: (a) a member of the household that occupies the residence on a Lot, or a guest or invitee of a member of that household; or (b) a guest or invitee of an Owner on its Lot or the Common Elements.

“Reserve Fund:” as defined in Section 8.5 of the Declaration, the reserve fund established by the Association for the maintenance, repair and replacement of the Common Elements and the portions of Improvements on Lots the Association is required to maintain.

“Respondant:” defined in Section 13.4.

“Rules:” as defined in Section 7.9 of the Declaration, reasonable rules and regulations established by the Board with respect to the Common Elements and Lots to carry out the intent of these Bylaws and the Declaration, to promote the general health, safety and welfare of Members and their Related Users, and to preserve and protect property rights.

“Special Assessments:” as defined in Section 8.2 of the Declaration, special assessments levied by the Board against the Lots, in addition to the annual General Assessment, based on each Lot’s Allocated Interest, to defray all or part of: (a) an operating deficit; (b) unbudgeted capital costs to construct, reconstruct, repair, replace or demolish Improvements that are part of the Common Elements or other Association Property; or (c) the acquisition cost of real property.

“Special Declarant Rights:” defined in Section 15.1.

“State:” the State of Colorado.

“Unavoidable Circumstances:” defined in Section 14.9.

“Vote” or “Votes:” as defined in Section 6.2 of the Declaration, the vote that may be cast by a Member, being one (1) vote for each Lot it owns. The percentage of Votes in the Association

allocated to a Lot is a fraction (expressed as a percentage) with a numerator of 1 and a denominator equal to the total number of Lots then in the Development.

CERTIFICATION:

By signature below, the Secretary of the Board of Directors certifies these Bylaws received the affirmative vote of _____ (67%) of the Members voting in Person or by Proxy at a duly constituted meeting of the Members.

GRAND VALLEY ESTATES HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation

By: _____
Secretary

Date: October __, 2018

EXHIBIT A
ARBITRATION PROCEDURES

1. Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the Disputants.
2. If the Disputants fail to agree on an arbitrator within thirty (30) days after the date the Claimant delivers its notice of arbitration to the Respondent, the presiding judge of the District Court where the Development is located shall appoint a qualified arbitrator upon application of either Disputant.
3. No Person shall serve as arbitrator if he or she has a financial or personal interest in the result of the arbitration or a familial, social or significant professional relationship with a Disputant. The Person selected to be arbitrator shall immediately disclose in writing to the Disputants any circumstance likely to affect the appearance of impartiality, including bias or financial or personal interest in the outcome of the arbitration. If a Disputant objects to the within fourteen (14) days after receipt of the arbitrator's disclosure, the arbitrator shall be replaced in the same manner in which he or she was selected.
4. The arbitrator shall fix the date, time and place for the hearing. Arbitration proceedings shall be conducted in the County where the Development is located unless the Disputants agree otherwise.
5. Except as modified in these Bylaws, the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
6. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the Disputants.
7. Unless directed by the arbitrator, there will be no post-hearing briefs.
8. The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the Disputants. The award shall be in writing and shall be signed by the arbitrator.
9. The arbitrator has the authority, in the sound exercise of discretion, to award the prevailing Disputant its costs and expenses, including Legal Costs.

EXHIBIT B
FORM OF DIRECTORS' CONFLICT OF INTEREST STATEMENT

The undersigned, as a member of the Board of Managers of the Grand Valley Estates Homeowners Association, Inc ("Association"), represents, warrants and covenants to the Association as follows:

1. I have read and I understand the attached Conflicts of Interest Policy of the Association (the "Policy").

2. I shall comply with the Policy.

3. To the best of my knowledge, after due investigation, as of the date below:

3.1 My "Family Members" (as defined in the Policy) are:

3.2 My "Related Entities" (as defined in the Policy) are:

3.3 I have no "Interest" in any pending "Board Action" or existing "Contract" or "Transaction" (as these terms are defined in the Policy).

4. I shall update this Disclosure Form as needed to ensure that the information provided in it remains accurate and complete.

Name: _____

Date