

# BYLAWS OF JACKSON RANCH OWNERS ASSOCIATION

## Article 1

### INTRODUCTION

These are the Bylaws of Jackson Ranch Owners Association (the "Association"), a Colorado nonprofit corporation, which shall operate under the Colorado Revised Nonprofit Corporation Act, as amended (the "CRNCA") but not under the Colorado Common Interest Ownership Act, as amended (the "Act"), which Act may be referred to herein as a means of incorporating procedures or terms by reference. Terms used herein shall have the meaning set forth in The Declaration of Conditions, Covenants Restrictions And Easements For Jackson Ranch as recorded in with the Clerk and Recorder of El Paso County at Reception number 215010695 (the "Declaration"). The purpose of the Association shall be to carry out the responsibilities of the Jackson Ranch Owners Association as set forth in the Declaration. Two specific purposes of the Association shall be 1) to operate, maintain and enforce, to the extent applicable, all the requirements of that plan for augmentation decreed in Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court in Consolidated Case Nos. 2013CW3100 (Division No. 1) and 2013CW3042 (Division No. 2), recorded April 17, 2014 at Reception No. 214031872 (the "Water Decree" or "Augmentation Plan," and 2) to comply with and enforce all provisions of the Private Detention Basin/Stormwater Quality Best Management Practice Maintenance Agreement and Easement recorded at Reception No. 215010693 ("Maintenance Agreement") including but not limited to managing, operating, cleaning, maintaining, and repairing the Detention Basins, and collecting and enforcing the assessments, charges, and liens imposed under the Declaration to carry out the provisions of the Maintenance Agreement. The responsibilities to operate, maintain, and enforce the Water Decree and to comply with and enforce the provisions of the Maintenance Agreement cannot be abrogated by the Association. The Declarant under the Declaration is Four Gates Land Development LLC, a Colorado limited liability company.

## Article 2

### BOARD OF DIRECTORS

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## **Section 2.1 Number and Qualification.**

A Board of Directors shall govern the affairs of the Association. The initial Board of Directors shall consist of three (3) members appointed by the Incorporator of the Association according to the direction of the Declarant. Only Owners, eligible to vote and otherwise in good standing, may be entitled or appointed to fill a vacancy on the Board of Directors; provided, however, Declarant shall have the right to appoint members to the Board of Directors and to have such appointed members remain on the Board of Directors as provided in the Declaration and these Bylaws and such members of the Board of Directors appointed by the Declarant need not be Owners. In the case where, through removal or resignation, the total number of Board of Directors members is less than three, the Board of Directors will be considered properly constituted until such vacancies are filled. The number of members of the Board of Directors may be increased or decreased as set forth in these Bylaws and by amendment of these Bylaws; provided, however the number must be an odd number.

- (a) The Declaration shall govern appointment of members of the Board of Directors during the period set forth in the Declaration for such appointments by the Declarant ("Period of Declarant Control").
- (b) Until the Declarant has conveyed 67% of the Lots to residential purchasers or January 1, 2024, whichever occurs earlier ("Period of Declarant Control"), the Declarant may appoint and remove all officers and members of the Board of Directors of the Association. Upon termination of the Period of Declarant Control, the Owners shall elect one member of the Board of Directors for a two-year term as an Additional Member of the Board of Directors, in addition to the members appointed by the Declarant, thereby expanding the Board to four members. One year following termination of the Period of Declarant Control, the Owners shall elect a second member of the Board for a two-year term as an Additional Member of the Board of Directors, thereby expanding the Board to five members. Two years following the termination of the Period of Declarant Control, at least one of the Directors appointed by the Declarant (as determined by the Declarant) shall leave the Board. Then the Owners shall elect two members of the Board of Directors to serve two-year terms, and, if necessary to bring the Board to five members, the Owners shall elect a third member to serve a one-year term, thereby maintaining the Board at five members, at least three of which have been elected by the Owners. Three years following the termination of the Period of Declarant Control, the Owners shall elect two members to serve two-year terms, and the number of Directors appointed by the Declarant shall be reduced to one, thereby maintaining the Board at five Directors. Thereafter each year the Owners shall elect two or three members to replace members whose terms are ending, maintaining the number of Directors at five. The Declarant shall continue to have the right to appoint one member of the Board of Directors until the end of the Period of Declarant Approval, as set forth in the Declaration.
- (c) At any time Owners, other than the Declarant, are entitled to elect a member of the Board of Directors, the Association shall call a meeting and shall give not less than ten (10) nor more than fifty (50) days' notice to the Owners for this purpose. This meeting may be called and the notice given by any Owner if the Association fails to do so.
- (d) Each Board of Directors member shall hold office until the election and qualification of his or her successor. At any meeting at which the Board of Directors is to be elected, the Owners may, by resolution, adopt specific procedures are not inconsistent with these Bylaws or the CRNCA for conducting the elections.

## **Section 2.2 Powers and Duties.**

The Board of Directors may act in all instances on behalf of the Association, except as provided in the Declaration or these Bylaws. The Board of Directors shall have, subject to the limitations contained in the Declaration, the powers and duties necessary for the administration of the affairs of the Association and of the Subdivision, including the following powers and duties:

- (a) Adopt and amend Bylaws and Rules and Regulations.
- (b) Adopt and amend budgets for revenues, expenditures and reserves.
- (c) Collect Assessments from Owners.
- (d) Suspend the voting interests allocated to a Lot and the right of an Owner to cast such votes. or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or, after notice and a hearing, during any time in which an Owner is in violation of any other provision of the Governing Documents.
- (e) Hire and discharge managing agents.
- (f) Hire and discharge employees, independent contractors and agents other than managing agents.
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents in the Association's name on behalf of the Association or on behalf of two or more Owners in matters affecting the Subdivision.
- (h) Make contracts and incur liabilities.
- (i) Regulate the use, maintenance, repair, replacement and modification of all property within the Subdivision.
- (j) Cause additional improvements to be made as a part of the Common Elements.
- (k) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to the affirmative vote of a majority of the Owners.
- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions, through or over the Common Elements.
- (m) Impose and receive, on behalf of the Association, a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements.
- (n) Establish from time to time, and thereafter impose charges for late payment of Assessments or any other sums due and, after notice and hearing, levy a reasonable fine for a violation of the Governing Documents.
- (o) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments.
- (p) Provide for the indemnification of the Association's officers and the Board of Directors to the extent provided by law, provide for the indemnification of committee members to the extent the Board of Directors deems just and reasonable, and maintain directors' and officers' liability insurance.
- (q) Declare the office of a member of the Board of Directors to be vacant in the event such member shall fail to participate in three (3) regular meetings of the Board of Directors during any one-year period.
- (r) Appoint any committee as required or permitted by the Declaration or these Bylaws or as may be deemed appropriate by the Board of Directors to carry out its purposes and duties, and by resolution, establish committees, permanent and standing, to perform of the above

functions under specifically delegated administrative standards as designated in the resolution establishing the committee.

- (s) By resolution, set forth policies and procedures which shall be considered incorporated herein by reference as though set forth in full, and which provide for corporate actions and powers which are different than those set forth in the CRNCA but which are permitted by the CRNCA to be otherwise set forth in the Bylaws. Such resolutions shall be given the same force and effect as if specifically enumerated in these Bylaws.
- (t) Exercise any other powers conferred by the Declaration, the Articles of Incorporation, these Bylaws or the CRNCA.
- (u) Exercise any other power necessary and proper for the governance and operation of the Association.
- (v) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association.
- (w) Operate, maintain and enforce, to the extent applicable, all the requirements of that plan for augmentation decreed in Case No. 13CW3100 (Water Division #1) and 13CW3042 (Water Division # 2) recorded at Reception 214031872 ("Augmentation Plan" or "Water Decree").
- (x) Comply with and enforce all provisions of the Maintenance Agreement, including collecting assessments, charges, and liens imposed under the Declaration.

### **Section 2.3      Manager.**

The Board of Directors may employ a Manager for the Subdivision, at a compensation established by the Board of Directors, to perform duties and services authorized by the Board of Directors; provided, however:

- (a) The Board of Directors may delegate to the Manager only the powers granted to the Board of Directors by these Bylaws under Section 2.02, Subdivisions (c), (f), (g), (h), (i) and (j).
- (b) Licenses, concessions and contracts may be executed by the Manager pursuant to specific resolutions of the Board of Directors and to fulfill the requirements of the budget.
- (c) The Board of Directors may require (i) that the manager shall maintain fidelity insurance coverage or a bond in amount not less than fifty thousand dollars or such higher amount as the Board of Directors may require and; (ii) that the manager shall maintain all funds and accounts of the association separate from the funds and accounts of other associations managed by the manager agent and maintain all reserve accounts of each association so managed separate from operational accounts of the association; and (iii) that an annual accounting for association funds and a financial statement be prepared and presented to the association by the managing agent, a public accountant, or a certified public accountant and that a review or an audit be completed by a certified public accountant at least every three years.

### **Section 2.4      Removal of Board of Directors Member.**

The Owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the Owners may remove any member of the Board of Directors, with or without cause other than one appointed by the Declarant; provided, however (i) notice that removal of one or more Board members must be given in the notice for the meeting, and (ii) the Board members who are subject to removal at such a meeting must be given an opportunity to be

heard. Written ballots given pursuant to Section 3.09 below shall not be utilized for this meeting. For purposes of this meeting a quorum of fifty percent (50%) of the Owners shall be required. Any member of the Board of Directors appointed by the Declarant during the period of Declarant Control may only be removed by the Declarant. Vacancies created by removal according to this Section 2.04 shall be filled as follows:

- (a) As to vacancies of Board of Directors members not appointed by the Declarant, by a majority of the remaining Board of Directors; provided, however, if the entire Board of Directors is removed at once, an election shall be held immediately thereafter at the same meeting; and
- (b) As to vacancies of Board of Directors members whom the Declarant has the right to appoint, by the Declarant.
- (c) Each person so elected or appointed shall serve on the Board of Directors for the remainder of the term of the member so replaced.

### **Section 2.5 Vacancies.**

Except in the case of removal of an Board of Directors member pursuant to Section 2.04 above, vacancies may be filled at a special meeting of the Board of Directors held for that purpose at any time after the occurrence of the vacancy, even though the members of the Board of Directors present at that meeting may constitute less than a quorum. These appointments shall be made, as to vacancies of Board of Directors members, and each person so elected or appointed shall serve on the Board of Directors for the remainder of the term of the member so replaced.

### **Section 2.6 Regular Meetings.**

The first regular meeting of the Board of Directors following each annual meeting of the Owners shall be held within sixty (60) days after the annual meeting at a time and place to be set by the Board of Directors at the meeting at which the Board of Directors shall have been elected. No notice shall be necessary to the newly elected Board of Directors in order to legally constitute such meeting, provided a majority of the Board of Directors members are present. The Board of Directors may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

### **Section 2.7 Special Meetings.**

Special meetings of the Board of Directors may be called by the President or by a majority of its members on at least three (3) business days' notice to each member.

### **Section 2.8 Quorum: Actions of the Board of Directors.**

A majority of the total number of Board of Directors members who are present shall constitute a quorum for all meetings and consents. Unless otherwise determined by a vote of the Board of Directors as to a particular issue, a majority vote of those present constitutes a valid corporate

action. Except as provide in Section 2.04, for purposes of this Article 2, the term "present" shall include attendance in person, by proxy (to the fullest extent provided by the CRNCA), via telephonic or other electronic means, or via "real time" e-mail.

**Section 2.9 Location of Meetings.**

All meetings of the Board of Directors shall be held either (i) within the State of Colorado, unless all members thereof consent in writing to another location, or (ii) in such a manner as to permit discussions and deliberations via telephonic means or communication via "real time" e-mail.

**Section 2.10 Waiver of Notice.**

Any Board of Directors member may waive notice of any meeting in writing. Attendance by any Board of Directors member at any meeting of the Board of Directors shall constitute a waiver of notice. If all the members of the Board of Directors are present at any meeting participating in a meeting through any means authorized by these Bylaws, no notice shall be required, and any business may be transacted at such meeting.

**Section 2.11 Consent to Corporate Action.**

- (a) Unless otherwise provided in these Bylaws, any action required or permitted by to be taken by the Board or any Committee at a Board of Directors (or committee) meeting may be taken without a meeting if each and every member of the Board (or committee) in writing either:
  - (a) Votes for such action; or
  - (b) (I)Votes against such action or abstains from voting; and (II) Waives the right to demand that action not be taken without a meeting.
- (c) Action is taken under this section only if the affirmative vote for such action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors (or committee members) then in office were present and voted.
- (d) No action taken pursuant to this section shall be effective unless writings describing the action taken and otherwise satisfying the requirements of subsection (a) of this section, signed by all Directors (or committee members) and not revoked pursuant to subsection (e) of this section, are received by the Association. Unless otherwise provided by the bylaws, any such writing may be received by the Association by electronically transmitted facsimile or other form of wire or wireless communication providing the Association with a complete copy of the document, including a copy of the signature on the document. A Director's (or committee member's) right to demand that action not be taken without a meeting shall be deemed to have been waived if the Association receives a writing satisfying the requirements of subsection (a) of this section that has been signed by the Director (or committee member) and not revoked pursuant to subsection (e) of this section. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association unless the writings describing the action taken state a different effective date.
- (e) Any Director (or committee member) who has signed a writing pursuant to this section may revoke such writing by a writing signed and dated by the Director (or committee member)

describing the action and stating that the Director's (or committee member's) prior vote with respect thereto is revoked, if such writing is received by the Association before the last writing necessary to effect the action is received by the Association.

(f) Action taken pursuant to this section has the same effect as action taken at a meeting of Directors (or committee) and may be described as such in any document.

(g) All signed written instruments necessary for any action taken pursuant to this section shall be filed with the minutes of the meetings of the Board of Directors (or committee).

### **Section 2.12 Types of Communication in Lieu of Attendance.**

Any member of the Board of Directors may attend a meeting of the Board of Directors by: (i) using an electronic or telephonic communication method whereby the member may be heard by the other member and may hear the deliberations of the other members on any matter properly brought before the Board of Directors; or (ii) by participating in "real time" e-mail communication when all Board members are participating in this form of communication. The vote of such member shall be counted and the presence noted as if that member was present in person on that particular matter.

### **Section 2.13 Compensation.**

No member of the Board of Directors shall receive any compensation from the Association for acting as such, however members of the Board of Directors may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Board of Directors members. Nothing herein shall prohibit the Association from compensating a member of the Board of Directors, or any entity with which a Board of Directors member is affiliated, for services or supplies furnished to the Association in a capacity other than as an Board of Directors member pursuant to a contract or agreement with the Association, provided that such Board of Directors member's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested member of the Board of Directors. Nothing herein shall prevent any member of the Board of Directors or any committee thereof from receiving compensation from the Declarant in connection with his or her service due to appointment by the Declarant.

## **Article 3**

### **OWNERS**

#### **Section 3.1 Meetings of the Owners.**

The following types of "meetings" (as that term is used in the CRNCA) shall be or may be held, as provided below.

(a) **Annual Meetings.**

An annual meeting of Owners shall be held at least once a year within the greater Colorado Springs metropolitan area, in the State of Colorado, at such date set forth in the notice. At these meetings, members of the Board of Directors shall be elected by ballot of the Owners, in accordance with the provisions of Article 2 of these Bylaws. The Owners may transact other business as may properly come before them at these meetings.

**(b) Special Meetings.**

Request that a special meeting of the Association be called may be made by the president, by a majority of the members of the Board of Directors or by a written instrument signed by Owners comprising twenty percent (20%) of the votes in the Association.

**(c) Meeting to Approve Annual Budget.**

At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to veto the budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Board of Directors. A summary of the proposed budget approved by the Board of Directors shall be mailed to the Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Owners (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of the CRNCA and Section 3.09 below). Unless a majority of all Owners rejects the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratifies a subsequent budget proposed by the Board of Directors as provided above.

**Section 3.2 Place of Meetings.**

Meetings of the Owners shall be held within the greater Colorado Springs metropolitan area and may be adjourned to a suitable place convenient to the Owners, as may be designated by the Board of Directors or the president.

**Section 3.3 Notice of Meetings.**

Except as otherwise set forth in Subsection 3.01 (c), the secretary shall cause notice of all meetings of the Owner set forth in Section 3.01 to be hand-delivered, sent via a nationally recognized over-night or express delivery service, or sent prepaid by United States mail directed to the mailing address of each Lot or to the mailing address designated in writing by the Owner, or sent by telefax transmittal to the fax number designated in writing by the Owner with a written confirmation of receipt, not less than ten (10) nor more fifty (50) days in advance of a meeting. The date of the notice shall be the date notice is so sent or the date received by the recipient or three days after placing the notice in the United States mail, whichever is sooner. No action shall be adopted at a special meeting except as stated in the notice.



### **Section 3.4 Adjournment of Meeting.**

At- any meeting of Owners, a Majority Vote may adjourn the meeting to another time.

### **Section 3.5 Order of Business.**

The order of business at all meetings of the owners shall be as set forth in the written meeting agenda available at the beginning of each meeting.

### **Section 3.6 Voting.**

- (a) If only one of several Owners of a Lot is present at a meeting of the Association, the Owner or Owners present is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority of the Owners of that Lot. Majority agreement exists if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by another Owner of the Lot.
- (b) The vote allocated to a Lot may be cast under a proxy duly executed by an Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven months (11 months) after its date, unless it specifies a shorter term.
- (c) The vote of a corporation or limited liability company may be cast by an officer of that corporation or by the manager of the limited liability company in the absence of express notice of the designation of a specific person by such Owner's governing body, members, manager, operating agreement or bylaws. The vote of a limited liability limited partnership or a limited partnership may be cast by the general partner (or any general partner if there is more than one general partner). Any general partner of the owning partnership may cast the vote of a general partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of an Owner which is a corporation, limited liability company, limited liability limited partnership, limited partnership, general partnership or any other type of entity recognized by Colorado law is qualified to vote.
- (d) Votes allocated to a Lot owned by the Association may not be cast.

### **Section 3.7 Quorum.**

Except as otherwise provided in these Bylaws, the Owners present in person or by proxy at any meeting of Owners, representing twenty percent (20%) of the votes in the Association, shall constitute a quorum at that meeting. For purposes of this Article 3, the term "present" shall include attendance in person, by proxy, via telephonic or other electronic means, via "real time" e-mail or, in the case of written ballots, by providing written response on or before the date

responses are due as set forth in the written ballot. Only Owners eligible to vote may cast proxies for other Owners and only Owners eligible to vote may be considered "present."

### **Section 3.8 Majority Vote.**

The term "Majority Vote" shall mean the vote of a majority of the Owners (casting one vote per Lot) present and shall be binding upon all Owners for all purposes except where a higher percentage vote is required in the Declaration or these Bylaws. Reference to a "majority of all Owners" in the Declaration or these Bylaws shall mean a vote cast by Owners representing one more than one-half of all Lots in the Subdivision.

### **Section 3.9 Voting by Mail.**

Except as limited by Section 2.04 above, the Board of Directors may decide that voting of the Owners on any matter required or permitted by the statutes of Colorado, the Declaration, the Articles of Incorporation, or these Bylaws shall be by written ballot. Pursuant to the CRNCA, any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the secretary delivers a written ballot to every member entitled to vote on the matter. "Delivery" to the Owner of the ballot and the Owner's return of the completed ballot shall be made by the same methods available for providing notice to a member set forth in Section 3.03 above.

- (a) A written ballot shall: (i) set forth each proposed action; and (ii) provide an opportunity to vote for or against each proposed action.
- (b) Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- (c) All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than the election of member of the Board of Directors; (iii) specify the time by which a ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.
- (d) A written ballot, once received by the Association, may not be revoked, unless the Owner casting the written ballot appears in person at a meeting convened to consider any one or more of the mailers on the ballot.

## **Article 4**

### **OFFICERS**

#### **Section 4.1 Designation.**

The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant. The president, vice president, secretary and treasurer must be members of the Board of Directors. All members of the Board of Directors vote on election of officers, regardless of any office they may hold.

#### **Section 4.2 Election of Officers.**

At the organizational meeting of each new Board of Directors, the Board of Directors shall elect the officers of the Association.

#### **Section 4.3 Resignation and Removal of Officers.**

Upon the affirmative vote of a majority of the Board of Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for that purpose. Any officer may resign at any time by giving written notice to the president or secretary.

#### **Section 4.4 President.**

The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Owners and of the Board of Directors. The president shall have all of the general powers and duties which are incident to the office of president of a nonprofit corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from among the Owners from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

#### **Section 4.5 Vice President**

The vice president shall take the place of the president and perform 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 of Directors shall appoint another of its members to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Board of Directors or by the president.

#### **Section 4.6 Secretary.**

The secretary shall keep the minutes of all meetings of the Owners and the Board of Directors. The secretary shall have charge of the Association's books and papers as the Board of Directors

may direct and shall perform all the duties incident to the office of secretary of a nonprofit corporation organized under the laws of the State of Colorado. The secretary may cause to be prepared and may attest to execution by the president of amendments to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

#### **Section 4.7 Treasurer.**

The treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account shown all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board of Directors and shall perform all the duties incident to the office of treasurer of a nonprofit corporation organized under the laws of the State of Colorado. The treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Board of Directors. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as 'fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Board of Directors decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the treasurer, and executed by two members of the Board of Directors, one of whom may be the treasurer.

#### **Section 4.8 Execution of Instruments.**

Except as provided in Sections 4.04, 4.06, 4.07 and 4.09 of these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Board of Directors.

#### **Section 4.9 Statements of Unpaid Assessments.**

The treasurer, assistant treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments. The amount of the fee for preparing statements of unpaid Assessments and the time of payment shall be established by resolution of the Board of Directors. Any unpaid fees may be assessed as a Common Expense Assessment against the Lot for which the certificate or statement is furnished.

## **Article 5**

### **ENFORCEMENT**

#### **Section 5.1 Abatement and Enjoinment of Violations by Owners.**

The violation of any provision of the Governing Documents shall give the Board of Directors the right, in addition to any other rights set forth in the Governing Documents, after notice and an opportunity be heard (except in case of an emergency when no notice is required);

- (a) To enter the Lot in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist on that Lot) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Governing Documents. The Board of Directors shall not be deemed liable for any manner of trespass or damage by this action; or
- (b) To enjoin, abate or remedy by appropriate legal proceedings, either law or in equity, the continuance of any breach.

#### **Section 5.2 Fines for Violation.**

The Board of Directors may adopt resolutions providing for fines or other monetary penalties for the infraction of its Rules and Regulations or of the Declaration. Fines will be levied after notice thereof and an opportunity to be heard. The Board of Directors may levy fines in amounts that it, in its sole discretion, shall determine to be reasonable for each such violation, including those violations which persist after notice and an opportunity for a hearing is given.

## **Article 6**

### **INDEMNIFICATION**

#### **Section 6.1 Actions Other Than By Or In The Right of The Association.**

The Association shall indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a member of the Board of Directors or officer of the Association, who is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) judgments, fines, amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, if he or she acted in good faith and in a manner which such individual

reasonably believed to be in the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner he or she reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe his or her conduct was unlawful. Such liability shall be satisfied within thirty (30) days after request therefor if there exists adequate operating funds but, if not, the funds shall be raised by a special assessment of the Owners as quickly as possible, without the need of Owners' approval.

### **Section 6.2      Actions By Or In The Right of The Association.**

The Association shall indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure judgment in its favor by reason of the fact that such person is or was a member of the Board of Directors or officer of the Association or is or was serving at the request of the Association in such capacity, against expenses (including expert witness fees, attorneys' fees and costs) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner which he or she reasonably believed it be in the best interests of the Association; but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence, recklessness, or willful misconduct in the performance of his or her duty in the Association unless, and to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability, but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses if such court deems proper.

### **Section 6.3      Successful on the Merits.**

To the extent that a member of the Board of Directors or any manager, officer, project manager, employee, fiduciary or agent of the Association has been wholly successful on the merits in defense of any action, suit or proceeding referred to in Sections 6.01 or 6.02 of this Article 6, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including expert witness fees, attorneys' fee and costs) actually and reasonably incurred him or her in connection therewith.

### **Section 6.4      Determination Required.**

Any indemnification under Sections 6.01 or 6.02 of this Article 6 (unless ordered by a court) and as distinguished from Sections 6.03 of this Article 6, shall be made by the Association only as authorized by the specific case upon a determination that indemnification of the member of the Board of Directors or officer is proper in the circumstances because such individual has met the applicable standard of conduct set forth in Sections 6.01 or 6.02 above. Such determination shall be made by the Board of Directors by majority vote of a quorum consisting of those members of the Board who were not parties to such action, suit or proceeding or, if a majority of

disinterested members of the Board of Directors so directs, by independent legal counsel or by members entitled to vote thereon. Such determination shall be reasonable, based on substantial evidence of record, and supported by a written opinion. The Board of Directors shall provide a copy of its written opinion to the officer or Board of Directors member seeking indemnification upon request.

**Section 6.5 Payment in Advance of Final Disposition.**

The Association shall pay for or reimburse the reasonable expenses incurred by a former or current member of the Board of Directors or officer who is a party to a proceeding in advance of final disposition of the proceeding if (i) the member of the Board of Directors or officer furnishes to the Association a written affirmation of the Board of Directors member's good faith belief that he or she has met the standard of conduct described in Sections 6.01 or 6.02 of this Article 6; (ii) the Board of Directors member or officer furnishes to the Association a written undertaking, executed personally or on the Board of Directors member's or officer's behalf to repay the advance if it is ultimately determined that the Board of Directors member or officer did not meet the standard of conduct; and (iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under this Article. The undertaking required in this Section 6.05 shall an unlimited general obligation of the Board of Directors but need not be accepted by the Board of Directors member or officer or may be accepted without reference to financial ability to make repayment.

**Section 6.6 No Limitation of Rights.**

The indemnification provided by this Article 6 shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to CRNCA. Upon a vote of the Board of Directors, the Association may also indemnify a member appointed by the Board of Directors to serve on a committee (when such committee member is not also a member of the Board of Directors) upon such terms and conditions as the Board of Directors shall deem just and reasonable.

**Section 6.7 Directors and Officers Insurance.**

The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors or an officer of the Association against any liability asserted against him or her and incurred by such individual in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify such individual against such liability under provisions of this Article 6.

**Article 7**

**RECORDS**

### **Section 7.1      Records and Audits.**

The Association shall maintain financial records. The cost of any audit or review shall be a Common Expense unless otherwise provided the Declaration. An audit or review shall be done no less often than every three years, less otherwise provided for in the Declaration or as determined by the Board of Directors.

### **Section 7.2      Examination.**

All records maintained by the Association or the Manager shall be available for examination and copying by any Owner or by any of their duly authorized representatives, at the expense of the person examining the records, during normal business hours and after reasonable notice in accordance with the CRNCA.

### **Section 7.3      Records.**

The Association shall keep the following records:

- (a) An account for each Lot, which shall designate the name and address of each Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Lot, the amount of each Common Expense Assessment, the dates on which each Assessment comes due, the amounts paid on the account and the balance due;
- (b) The current operating budget;
- (c) A record of insurance coverage provided for the benefit of Owners and the Association for the immediately preceding three years;
- (d) Tax returns for state and federal income taxation for the preceding seven years;
- (e) Minutes of proceedings of incorporators, Owners, Board of Directors and its committees (including written consents), and waivers of notice;
- (f) A copy of the most current versions of the Articles of Incorporation, Declaration, these Bylaws, Rules and Regulations, and resolutions of the Board of Directors, along with their exhibits and schedules;
- (g) All written communications to Owners (which communications shall only be made available to the Owner with whom the Association has communicated);
- (h) A list of the names and business or home addresses of the current members of the Board of Directors and officers;
- (i) A copy of the Association's most recent corporate report filed with the secretary of state in accordance with the CRNCA; and
- (j) Such other records the Board of Directors shall determine from time to time are necessary or desirable.

## **Article 8**

### **MISCELLANEOUS**



**Section 8.1 Notices.**

All notices to the Association or the Board of Directors shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Board of Directors may designate by written notice to all Owners. Except as otherwise provided, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association. All notices shall be deemed to have been given when deposited into the United States mail, first class postage prepaid, except notices of changes of address, which shall be deemed to have been given when received.

**Section 8.2 Fiscal Year.**

The Board of Directors shall establish the fiscal year of the Association.

**Section 8.3 Waiver.**

No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason or any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 8.4 Office.**

The principal office of the Association shall be within the Subdivision or at such other place as the Board of Directors may from time to time designate.

**Section 8.5 Reserves.**

As a part of the adoption of the regular budget the Board of Directors shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the expansion, modification or replacement of improvements to the Common Elements based upon the age, remaining life and the quantity and replacement cost of improvements to the Common Elements.

**Section 8.6 Conflict of Documents.**

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; in the case of any conflict between the Articles of Incorporation and the Declaration, the Declaration shall control.

**Article 9**

**AMENDMENT OF BYLAWS**

**Section 9.1     Vote.**

These Bylaws may be amended only by vote of the Board of Directors.

**Section 9.2     Rights of Mortgagees/Declarant.**

No amendment of these Bylaws of the Association shall be adopted which: (i) affects or impairs the validity or priority of any Mortgagee (ii) changes the provisions of these Bylaws with respect to. First Mortgagees; or (iii) effects any provisions for the benefit of Mortgagees as set forth in the Declaration. Without the Declarant's consent in writing, no amendment of these Bylaws of the Association shall be adopted which negatively affects or impairs the rights of the Declarant.


**Section 9.3     Obligations. Water Court Decree.**

The obligations of the Association regarding the operation of and compliance with the Water Decree may not be altered except by approval of El Paso County and by order of the Water Court, which may amend, modify or change such provisions by judicial order.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this 1<sup>st</sup>  
day of February, 2015.

BOARD OF DIRECTORS

  
Marlene Brown

  
Marshal Brown