

FIRST AMENDED AND RESTATED
BYLAWS
OF
TRAILMARK HOMEOWNERS ASSOCIATION, INC.

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FIRST AMENDED AND RESTATED
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OF
TRAILMARK HOMEOWNERS ASSOCIATION, INC.

1. GENERAL

1.1 Purpose of Bylaws. These Bylaws are adopted for the regulation and management of the affairs of TrailMark Homeowners Association, Inc. ("Association"). The Association has been organized as a Colorado corporation under the Colorado Revised Nonprofit Corporation Act to be and constitutes the Association under the Declaration of Covenants, Conditions and Restrictions for Chatfield Green ("Declaration"). The Declaration has been or will be executed by ADM-Chatfield Green, LLC, a Colorado limited liability company ("Declarant"). The Declaration relates to real property in Jefferson County, Colorado, which becomes subject to the Declaration ("Community Area").

1.2 Terms Defined in the Declaration. Terms used in these Bylaws which are defined in the Declaration shall have the same meaning and definition as in the Declaration.

1.3 Controlling Laws and Instruments. These Bylaws are controlled by and shall always be consistent with the provisions of the Colorado Revised Nonprofit Corporation Act, the Colorado Common Interest Ownership Act, the Declaration and the Articles of Incorporation of the Association filed with the Secretary of State of Colorado, as any of the foregoing may be amended from time to time.

2. OFFICES.

2.1 Principal Office. The Board of Directors, in its discretion, may fix and may change, from time to time, the location of the principal office of the Association provided that, until such time as suitable quarters can reasonably be obtained within the Community Area, the principal office of the corporation shall be located at 1875 Lawrence Street, Suite 350, Denver, Colorado.

2.2 Registered Office and Agent. The Colorado Nonprofit Corporation Act requires that the Association have and continuously maintain in the State of Colorado a registered office and a registered agent whose business office is identical with such registered office. The registered office need not be the same as the principal office of the Association. The initial registered office and the initial registered agent are specified in the Articles of Incorporation of the Association but may be changed by the Association at any time, without amendment to the Articles of Incorporation, by filing a statement as specified by law in the Office of the Secretary of State of Colorado.

3. MEMBERS.

3.1 Members. A "Member" as defined in the Declaration, is a Person, or if more than one, all Persons collectively, who constitute the Owner of a Lot.

3.2 Memberships Appurtenant to Lots. Each Member shall be appurtenant to the fee simple title to a Lot. The Person or Persons who constitute the Owner of fee simple title to a Lot shall automatically be the holder of the Membership appurtenant to that Lot and the Membership shall automatically pass with fee simple title to the Lot.

3.3 Voting Rights of Members. Each Member shall have the right to cast one vote for each Lot owned by such Member. Notwithstanding the foregoing, Declarant shall be entitled to select and appoint, in its sole discretion, Directors, in accordance with the provision of Section 5.5 hereof (the "Declarant Control Period"); provided, however, that not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created within the Community Area by Declarant to Owners other than Declarant, at least one Member, and not less than twenty-five percent (25 %) of the Members of the Board of Directors must be elected by Owners other than Declarant and that no later than sixty (60) days after the conveyance of fifty percent (50%) of the Lots that may be created within the Community Area to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3 %) of the Members of the Board of Directors must be elected by Owners other than Declarant. The Declarant Control Period shall cease on the happening of any of the following events, whichever occurs earlier: (a) when seventy-five percent (75 %) of the Lots that may be created within the Community Area have been conveyed to Persons other than Declarant; (b) two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business; (c) two (2) years after any right to add new units was last exercised; or (d) when, in its discretion, Declarant so determines.

3.4 Voting by Joint Owners. If there is more than one person who constitutes the Owner of a Lot, each such Person shall be entitled to attend any meeting of Members, but the voting power attributable to the Lot shall not be increased. In all cases in which more than one Person constitutes the Owner of a Lot, including instances in which a Lot is owned by a husband and wife, then, unless written notice to the contrary, signed by any one of such Persons, is given to the Board of Directors of the Association prior to the meeting, only one such Person shall be entitled to cast, in person or by proxy, the vote attributable to the Lot. If, however, more than one Person constituting such Owner attends a meeting in person or by proxy, then such Persons shall designate one Person to vote on behalf of such Owner, and the vote of such person shall be the vote attributable to such Lot.

3.5 Resolution of Voting Disputes. In the event of any dispute as to the entitlement of any Member to vote or as to the results of any vote of Members, the Board of Directors of the Association shall act as arbitrators and the decision of a disinterested majority of the Board of Directors shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon in accordance with the Colorado Uniform Arbitration Act of 1975, as the same may be amended; provided, however, that the Board of Directors shall have no authority or jurisdiction to determine matters relating to the entitlement of Declarant to vote or relating to the manner of exercise by Declarant of its voting rights. No dispute as to the entitlement of any Member to vote

shall postpone or delay any vote for which a meeting of Members has been duly called pursuant to the provisions of these Bylaws and a quorum is present.

3.6 Suspension of Voting Rights. The Board of Directors may suspend, after notice and hearing as provided herein, the voting rights of a Member during and for up to 60 days following any breach by such Member of any provision of the Declaration or of any rule or regulation adopted by the Association unless such breach is a continuing breach, in which case such suspension shall continue for so long as such breach continues and for up to 60 days thereafter.

3.7 Determination of Member Voting Percentage. Notwithstanding anything to the contrary herein, only Members whose voting rights are in good standing (e.g., voting rights which have not been suspended as provided herein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has been met.

3.8 Transfer of Memberships on Association Books. Transfers of Memberships shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the Membership is appurtenant. Prior to presentation of such evidence, the Association may treat the previous owner of the Membership as the owner of the Membership entitled to all rights in connection therewith, including the rights to vote and to receive notice.

3.9 Assignment of Voting Rights to Tenants and Mortgagees. A Member may assign his right to vote to a tenant occupying his Lot or to a Mortgagee of his Lot for the term of the lease or the Mortgage and any sale, transfer or conveyance of the Lot shall, unless otherwise provided in the document of sale, transfer or conveyance, be subject to any such assignment of voting rights to any tenant or Mortgagee. Any such assignment of voting rights and any revocation or termination of any assignment of voting rights shall be in writing and shall be filed with the Secretary of the Association.

4. MEETINGS OF MEMBERS.

4.1 Place of Members' Meetings. Meetings of Members shall be held at the principal office of the Association or at such other place, within or convenient to the Community Area, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2 Annual Meetings of Members. Annual meetings of the Members shall be held at least once each year beginning in 1999 on such day and at such time of day as is fixed by the Board of Directors and specified in the notice of meeting. The annual meetings shall be held to transact such business as may properly come before the meeting.

4.3 Special Meetings of Members. Special meetings of the Members may be called by

the Board of Directors of the Association, the president of the Association or by Members holding not less than 20% of the total votes of all Members entitled to vote, excluding votes of Declarant, or by Members holding not less than 20% of the total votes of all Members entitled to vote, including votes of Declarant. No business shall be transacted at a special meeting of Members except as indicated in the notice thereof.

4.4 Record Date. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of Members or in order to make a determination of such Members for any other proper purpose, the Board of Directors of the Association may fix, in advance, a date as the record date for any such determination of Members. The record date shall be not more than 50 days prior to the meeting of Members of the event requiring a determination of Members.

4.5 Notice of Members' Meetings. Written notice stating the place, day and hour of any meeting shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the President or the Secretary of the Association or the officers or persons calling the meeting, to each Member entitled to vote at such meeting. The notice of an annual meeting shall identify any matter which it is known may come before the meeting including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any Budget changes, and any proposal to remove an officer or member of the Board of Directors. The notice of a special meeting shall state the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage thereon prepaid. Such notice may be posted in a conspicuous place in the Community Area, such as on a notice board outside the principal office of the Association, and such notice shall be deemed to be delivered to any Member upon posting if such Member has not furnished an address for mailing of notice to the Association.

4.6 Proxies. A Member entitled to vote may vote in person or by proxy in writing by the Member or his duly authorized attorney-in-fact and filed with the Chairman of the meeting prior to the time the proxy is exercised. Any proxy may be revocable by attendance of a Member in person at a meeting or by revocation in writing filed with the Chairman of the meeting prior to the time the proxy is exercised. A proxy shall automatically cease upon the conveyance by a Member of the Lot of the Member and the transfer of the Membership on the books of the Association. No proxy shall be valid: (a) 60 days after the date of its execution unless otherwise provided in the proxy; and in any event, for no more than 11 months after the date of its execution; (b) unless the signatures of the Members providing the proxy are notarized; (c) unless the proxy contains the signature of all Members entitled to vote such interest; and (d) unless the proxy states the specific purpose and the specific meeting for which it was granted. Any form of proxy furnished or solicited by the Association and any form of written ballot by the Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of matters which is known at the time the form of proxy or written ballot is prepared, may come before the meeting and shall provide, subject to reasonably specified conditions, that if a Member specifies a choice with respect to any such matter, the vote shall be cast in accordance therewith.

4.7 Quorum at Members' Meetings. Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least ten percent (10%) of the votes of all Members entitled to vote shall constitute a quorum at any meeting of such Members. Members present in person or by proxy at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of Members so as to leave less than a quorum. If the required quorum is not present in person or by proxy at any such meeting of Members, another meeting may be called, subject to the notice hereinabove specified, and the presence, in person or by proxy, of Members entitled to cast at least five percent (5%) of the votes of all Members, shall, except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, constitute a quorum at such meeting.

4.8 Adjournments of Members' Meetings. Members present in person or by proxy at any meeting may adjourn the meeting from time to time, whether or not a quorum shall be present in person or by proxy, without notice other than announcement at the meeting, for a total period or periods of not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present in person or by proxy, any business may be transacted which might have been transacted at the meeting as originally called.

4.9 Vote Required at Members' Meetings. At any meeting, if a quorum is present, a majority of the votes present in person or by proxy and entitled to be cast on a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

4.10 Order of Business. The order of business at any meeting of Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; and (d) the conducting of the business for which the meeting was called.

4.11 Chairman of Meetings. At any meeting, the President of the Association shall preside over the meeting.

4.12 Expenses of Meetings. The Association shall bear the expenses of all annual meetings of Members and of special meetings of Members.

4.13 Waiver of Notice. A waiver of notice of any meeting of Members, signed by a Member, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Member. Attendance of a Member at a meeting, either in person or by proxy, shall constitute waiver of notice of such meeting except when the Member attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

4.14 Action of Members Without a Meeting. Any action required to be taken or which

may be taken at a meeting of Members may be taken without a meeting if a consent, in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

5. BOARD OF DIRECTORS.

5.1 General Powers and Duties of Board. The Board of Directors shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so. Without limiting the generality of the foregoing, the Board of Directors shall have the power to exercise or cause to be exercised for the Association, all of the powers, rights and authority of the Association, not reserved to Members, and provided in the Declaration, the Articles of Incorporation, these Bylaws, the Colorado Revised Nonprofit Corporation Act or the Colorado Common Interest Ownership Act, as the same may be amended from time to time.

5.2 Special Powers and Duties of Board. Without limiting the foregoing statement of general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as a forth in the Declaration, the Board of Directors of the Association shall be vested with and responsible for the following specific powers and duties:

(a) Assessments. The duty to fix and levy from time to time as it deems necessary Common Assessments, Special Assessments, and Reimbursement Assessments upon the Members of the Association provided in the Declaration; to determine and fix the due date for the payment of such Assessments and the date upon which the same shall become delinquent; and to enforce the payment of such delinquent assessments as provided in the Declaration.

(b) Taxes. The duty to pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Board of Directors shall also have the power to contest any such taxes or assessments in accordance with the provisions contained in the Declaration.

(c) Insurance. The duty to contract and pay premiums for fire and casualty and blanket liability and other insurance in accordance with the provisions of the Declaration.

(d) Suspend Voting Rights. Suspend the voting rights and the right of a Member to use the Common Areas, after notice and hearing as provided herein, for a period not to exceed sixty (60) days, for infraction of published Association Rules and Regulations or the Bylaws, unless such infraction is a continuing infraction, in which case such suspension shall continue for so long as such infraction continues and for up to sixty (60) days thereafter.

(e) Contracts, Licenses, Leases and Agreements. Enter into, make, perform or enforce contracts, licenses, leases and agreements of every kind and description; provided, however, that the following contracts and leases, if such contracts and leases are entered into before the Board elected by the Members takes office subsequent to termination of the Declarant Control Period, may

be terminated without penalty by the Association at any time after such date, upon not less than ninety (90) days' notice to the other party:

(1) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(2) Any other contract or lease between the Association and a Declarant or an affiliate of a Declarant; or

(3) Any contract or lease that is not bona fide or was unconscionable to the Members at the time entered into under the circumstances then prevailing. However,

this subsection 5.2(e)(3) does not apply to any lease the termination of which would terminate the Common Interest Community or reduce its size, unless the real estate subject to that lease was included in the Common Interest Community for the purpose of avoiding the right of the Association to terminate a lease under this subsection or a proprietary lease;

(f) Association Property. The duty and power to contract for and pay bills for maintenance, legal service, accounting service, gardening, common utilities and other materials, supplies and services relating to the Association Properties, tracts adjacent to the Association Properties and perimeter fencing located along the boundaries of the Community Area, and to employ personnel necessary for the care and operation of the Association Properties and tracts adjacent to the Association Properties, and to contract and pay for necessary Improvements on the Association Properties.

(g) Agents and Employees. The power to select, appoint, and remove all officers, agents, and employees of the Association and to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; and to fix their compensation and to require from them security for faithful service as deemed advisable by the Board.

(h) Borrowing. The power, with the approval of Members representing at least eighty (80%) of the voting power of the Association (exclusive of the voting power of the Declarant and those Members not entitled to cast votes), to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

(i) Enforcement. The power to enforce the provisions of the Declaration, the Rules and Regulations, these Bylaws or other agreements of the Association.

(j) Delegation of Powers. The power to delegate its powers according to law.

(k) Easements. The power to grant easements where necessary for utilities and other facilities over the Association Properties to serve the Community Area as set forth in the Declaration and to grant and convey such other easements as the Board of Directors deem prudent including, but not limited to, easements which benefit property located outside the Community Area.

(l) Rules and Regulations. The power to adopt such Rules and Regulations as the Board may deem necessary for the management of the Community Area. Such Rules and Regulations may concern, without limitation, use of the Association Properties, signs, parking restrictions; commence collection and disposal of refuse; minimum standards of property maintenance consistent with the Declaration and the standards adopted by the Design Review Committee; and any other matters within the jurisdiction of the Association as provided in the Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles and these Bylaws.

(m) Annexations. The power to annex additional real property to the Community Area as more fully provided in the Declaration.

Any of the aforesaid duties may be delegated by the Board to any other Person(s) or to a Manager. To the extent it may be required by any statute, and if not required by statute then at the option of the Board, said Manager or other person who receives the delegation of duties relating to the collection, deposit, transfer or disbursement of Association funds shall: (1) maintain fidelity insurance or a bond in an amount not less than \$50,000 or such higher amount as the Board may require; and (2) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the Manager or other person(s) and maintain all reserve accounts separate from operational accounts of the Association. Further, the Manager, or a Public Accountant or Certified Public Accountant shall prepare and present to the Association an annual accounting for Association funds and a financial statement.

5.3 Qualifications of Directors. A Director may be any natural person and need not be an Owner of a Lot within the Community Area; provided, however, that upon the expiration of the Declarant's Control Period, at least a majority of the Directors shall be Owners, other than Declarant, or designated representatives of Owners other than Declarant. A Director may be reelected and there shall be no limit on the number of terms a Director may serve.

5.4 Number of Directors. The number of Directors of the Association shall be five. The number of Directors may be increased or decreased in accordance with these Bylaws provided that the number of Directors shall not be less than three and no decrease in number shall have the effect of shortening the term of any incumbent director.

5.5 Appointment, Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Prior to the time Members, other than Declarant, own twenty-five percent (25

%) of the Lots, all Directors shall be appointed by Declarant. All Directors appointed by Declarant shall be subject to removal at any time and from time to time, by Declarant, in its sole and absolute discretion.

(b) Within sixty (60) days after the time Members, other than Declarant, own twenty (25 %) of the Lots which may be created within the Community Area or whenever Declarant earlier determines, in its sole and absolute discretion, the Association shall call a special meeting at which Members other than Declarant shall elect one (1) of the five (5) Directors. The remaining four (4) Directors shall be appointed by Declarant. The Director elected by the Members other than Declarant shall not be subject to removal by Declarant acting alone and shall be elected to serve until the second following annual meeting or until the happening of the event described in subparagraph (c) below, whichever is sooner. If such Director's term expires or such Director is removed prior to the happening of the event described in subparagraph (c) below, a successor shall be elected by the Members other than Declarant for a like term.

(c) Within sixty (60) days after the time Members, other than Declarant, own fifty (50%) of the Lots which may be created within the Community Area, or whenever Declarant earlier determines, in its sole and absolute discretion, the Association shall call a special meeting at which time the Members, other than Declarant shall elect two (2) Directors. The remaining three (3) Directors shall be appointed by Declarant. The Directors elected by the Members other than Declarant shall not be subject to removal by Declarant acting alone and shall be elected to serve until the second following annual meeting or until the happening of the event described in subparagraph (d) below, whichever is sooner. If such Directors' terms expire or such Director is removed prior to the happening of the event described in subparagraph (d) below, successors shall be elected by Members other than Declarant for like term.

(d) Within sixty (60) days after the time the Declarant's Control Period terminates as provided herein, the Association shall call a special meeting at which time the Members, including Declarant, if Declarant is the owner of any Lots, shall elect all five (5) Directors. Two of the Directors elected by the Members, including Declarant, shall serve until the first annual meeting following the termination of the Declarant Control Period, two of the Directors shall serve until the second annual meeting following the termination of the Declarant Control Period, and one of the Directors shall serve until the third annual meeting following the termination of the Declarant Control Period. Upon completion of the terms of the Directors elected by the Members under this paragraph, the succeeding Directors shall be elected for terms of two years each.

(e) Within sixty (60) days after the Owners elect a majority of the Board of Directors, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including without limitation the following items:

(i) The original, or a certified copy of, the Recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;

(ii) An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Declarant's Control Period is terminated. The financial statements shall be audited by an independent certified public accountant and shall be 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 therefor. The expense of the final audit shall not be paid for or charged to the Association;

(iii) The Association funds or control thereof;

(iv) All of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association and all of Declarant's tangible property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Association Properties; and inventories of such personal property;

(v) A copy of any plans and specifications used in the construction of the Improvements in the Community Area;

(vi) All insurance policies then in force, in which the Owners, the Association, or its Directors and Officers are named as insured persons;

(vii) Copies of any certificates of occupancy that may have been issued with respect to any Improvements comprising the Association Properties;

(viii) Any other permits issued by governmental bodies applicable to the Community Area and which are currently in force or which were issued within one (1) year prior to the date on which Owners, other than Declarant, took control of the Association;

(ix) Written warranties of any contractor, subcontractors, suppliers, and manufacturers that are still effective;

(x) A roster of Owners and Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records;

(xi) Employment contracts in which the Association is a contracting party;
and

(xii) Any service contract in which the Association is a contracting party or any other contract in which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

5.6 Removal of Directors. Except as set forth in Section 5.5. at any meeting of Members, the notice of which indicates such purpose, any Director may be removed, with or without cause, by vote of two-thirds (2/3) of the Members of the Association entitled to vote and a successor may be then and there elected to fill the vacancy thus created.

5.7 Resignation of Directors. Any Director may resign at any time by giving written notice to the President, to the Secretary or to the Board of Directors stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

5.8 Vacancies in Directors. Any vacancy occurring in the Board of Directors shall, unless filled in accordance with Sections 5.5 and 5.6 or by election at a special meeting of Members, be filled by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors may be present. Any Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. Except as provided herein, a Directorship to be filled by reason of an increase in the number of Directors shall be filled only by vote of the Members.

5.9 Executive Committee. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint an Executive Committee, which shall consist of three or more Directors and which unless otherwise provided in such resolution, shall have and exercise all the authority of the Board of Directors except authority with respect to the matters specified in the Colorado Nonprofit Corporation Act and the Colorado Common Interest Ownership Act as matters which such committee may not have and exercise the authority of the Board of Directors.

5.10 Other Committees of Association. The Board of Directors, by resolution adopted by a majority of the Directors in office, may designate and appoint one or more other committees, which may consist of or include Members who are not Directors. Any such committee shall have and exercise such authority as shall be specified in the resolution creating such Committee except such authority as can only be exercised by the Board of Directors. The Board of Directors shall create a committee whose responsibility is to monitor compliance of the Association Members with the Arboretum Agreement, recommend ways to comply with its provisions, and provide liaison with a representative of the Arboretum, including providing the Arboretum with timely notice of Members meetings.

5.11 General Provisions Applicable to Committees. The designation and appointment of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him by law. All regular and special meetings of any committee shall be open to attendance by all Members of the Association or their representatives, except for executive or closed door sessions which shall comply with the Colorado Common Interest Ownership Act.

6. MEETINGS OF DIRECTORS.

6.1 Place of Directors' Meetings. Meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, within or convenient to the Community Area, as may be fixed by the Board of Directors and specified in the notice of the meeting.

6.2 Annual Meeting of Directors. Annual meetings of the Board of Directors shall be held on the same date as, or within 10 days following, the annual meeting of Members. The business to be conducted at the annual meeting of Directors shall consist of the appointment of officers of the Association and the transaction of such other business as may properly come before the meeting. No prior notice of the annual meeting of the Board of Directors shall be necessary if the meeting is held on the same day and at the same place as the annual meeting of Members at which the Board of Directors is elected or if the time and place of the annual meeting of the Board of Directors is announced at the meeting of such Members.

6.3 Other Regular Meetings of Directors. The Board of Directors shall hold regular meetings at least quarterly and may, by resolution, establish in advance the times and places for such regular meetings. No prior notice of any regular meetings need be given after establishment of the times and places thereof by such resolution.

6.4 Special Meetings of Directors. Special meetings of the Board of Directors may be called by the President or any two members of the Board of Directors.

6.5 Notice of Directors' Meetings. In case of all meetings of Directors for which notice is required, notice stating the place, day and hour of the meeting shall be delivered not less than three nor more than 50 days before the date of the meeting, by mail, telegraph, telephone or personally, by or at the direction of the persons calling the meeting, to each member of the Board of Directors. If mailed, such notice shall be deemed to be delivered at 5:00 p.m. on the second business day after it is deposited in the mail addressed to the Director at his home or business address as either appears on the records of the Association, with postage thereon prepaid. If telegraphed, such notice shall be deemed delivered at 5:00 p.m. on the next calendar day after it is deposited in a telegraph office addressed to the Director at either such address, with all charges thereon prepaid. If by telephone, such notice shall be deemed to be delivered when given by telephone to the Director or to any person answering the phone who sounds competent and mature at this home or business phone number as either appears on the delivery of a copy of a written notice to, or upon verbally advising, the Director or some person who appears competent and mature at his home or business address as either appears on the records of the Association. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of such meeting.

6.6 Open Meetings. All regular and special meetings of the Board of Directors, or any committee thereof, shall be open to attendance by all Members or their representatives, except that the Board of Directors or a committee thereof may hold an executive or closed door session and may restrict attendance to Board members and other persons specified by the Board; provided that any such executive or closed door session may only be held in accordance with the provisions and

requirements of the Colorado Common Interest Ownership Act, as amended from time to time, or other applicable law.

6.7 Proxies. A Director shall not be entitled to vote by proxy at any meeting of Directors.

6.8 Quorum of Directors. A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business.

6.9 Adjournment of Director's Meetings. Directors present at any meeting of Directors may adjourn the meeting from time to time, whether or not a quorum shall be present, without notice other than an announcement at the meeting, for a total period or periods not to exceed 30 days after the date set for the original meeting. At any adjourned meeting which is held without notice other than announcement at the meeting, the quorum requirement shall not be reduced or changed, but if the originally required quorum is present, any business may be transacted at the meeting as originally called.

6.10 Vote Required at Directors' Meeting. At any meeting of Directors, if a quorum is present, a majority of the votes present in person and entitled to be cast in a matter shall be necessary for the adoption of the matter, unless a greater proportion is required by law, the Declaration, the Articles of Incorporation or these Bylaws.

6.11 Order of Business. The order of business at all meetings of Directors shall be as follows: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) unfinished business; and (g) new business.

6.12 Officers at Meeting. The President shall act as chairman and the Board of Directors shall elect a Director to act as secretary at all meetings of Directors.

6.13 Waiver of Notice. A waiver of notice of any meeting of the Board of Directors, signed by a Director, whether before or after the meeting, shall be equivalent to the giving of notice of the meeting to such Director. Attendance of a Director at a meeting in person shall constitute waiver of notice of such meeting except when the Director attends for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.14 Action of Directors Without a Meeting. Any action required to be taken or which may be taken at a meeting of Directors may be taken without a meeting if each and every member of the Board in writing either: (a) votes for such action; or (b) votes against such action or abstains from voting; and waives the right to demand that a meeting be held. 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 then in office were present and voted. No action taken pursuant to this section shall be effective unless writings describing the action taken and otherwise satisfying the requirements of this section, signed by all

Directors and not revoked pursuant to the provisions of this section, are received by the Association. 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. 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 set forth a different effective date. Any Director who has signed a writing pursuant to this section may revoke such writing by a writing signed and dated by the Director describing the action and stating that the Director'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. Action taken pursuant to this section has the same effect as action taken at a meeting of Directors and may be described as such in any document. 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.

6.15 Participation by Electronic Means. Unless otherwise provided in the bylaws, the Board of Directors may permit any Director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

7. OFFICERS

7.1 Officers, Employees and Agents. The officers of the Association shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, assistant officers, employees and agents as may be deemed necessary by the Board of Directors. Officers other than the President need not be Directors. No person shall simultaneously hold more than one office except the offices of Secretary and Treasurer.

7.2 Appointment and Term of Office and Officers. The officers shall be appointed by the Board of Directors at the annual meeting of the Board of Directors and shall hold office, subject to the pleasure of the Board of Directors until the annual meeting of the Board of Directors or until their successors are appointed, whichever is later, unless the officer resigns, or is earlier removed.

7.3 Removal of Officers. Any officer, employee or agent may be removed by the Board of Directors, with or without cause, whenever in the Board's judgment the best interests of the Association will be served thereby. The removal of an officer, employee or agent shall be without prejudice to the contract rights, if any, of the officer, employee or agent so removed. Election or appointment of an officer, employee or agent shall not of itself create contract rights.

7.4 Resignation of Officers. Any officer may resign at any time by giving written notice to the President, the Secretary or to the Board of Directors of the Association stating the effective date of such resignation. Acceptance of such resignation shall not be necessary to make the resignation effective.

7.5 Vacancies in Officers. Any vacancy occurring in any position as an officer may be filled by the Board of Directors. An Officer appointed to fill a vacancy shall be appointed for the unexpired term of his predecessor in office.

7.6 President. The President shall be a member of the Board of Directors and shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall direct, supervise, coordinate and have general control over the affairs of the Association. and shall have the powers generally attributable to the chief executive officer of a corporation. The President shall preside at all meetings of the Board of Directors and of Members of the Association.

7.7 Vice President. The Vice President may act in place of the President in case of his death, absence or inability to act, and shall perform such other duties and have such authority as is from time to time delegated by the Board of Directors or by the President.

7.8 Secretary. The Secretary shall be the custodian of the records and the seal of the Association and shall affix the seal to all documents requiring the same; shall see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law and that the books, reports and other documents and records of the Association are properly kept and filed; shall take or cause to be taken and shall keep minutes of the meetings of Members, of the Board of Directors and of committees of the Board; shall keep at the principal office of the Association a record of the names and addresses of the Members; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may, from time to time, be assigned to him by the Board of Directors or by the President. The Board may appoint one or more Assistant Secretaries who may act in place of the Secretary in case of his death, absence or inability to act.

7.9. Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Association; shall deposit all in the name of the Association in such depositories as shall be designated by the Board of Directors; shall keep correct and complete financial records and books of account and records of financial transactions and condition of the Association and shall submit such reports thereof as the Board of Directors may, from time to time, require; and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Directors or by the President. The Board may appoint one or more Assistant Treasurers who may act in place of the Treasurer in case of his death, absence or inability to act.

8. INDEMNIFICATION OF OFFICIALS AND AGENTS.

8.1 Certain Definitions. A "Corporate Official" shall mean any Director, officer or Tribunal Member, as hereinafter defined, and any former Director, officer or Tribunal Member of the Association. A "Corporate Employee" shall mean any employee and any former employee of the Association. "Expenses" shall mean all costs and expenses, including attorneys' fees, liabilities, obligations, judgments and any amounts paid in reasonable settlement of a Proceeding. "Proceeding"

shall mean any claim, action, suit or proceeding, whether threatened, pending or completed, and shall include appeals.

8.2 Right of Indemnification. The Association shall indemnify any Corporate Official and any Corporate Employee against any and all Expenses actually and necessarily incurred by or imposed upon him to the fullest extent provided by law. The right of indemnification shall not extend to any matter as to which such indemnification would not be lawful under the laws of the State of Colorado.

(a) Standard of Conduct. The Association shall indemnify any Corporate Official and any Corporate Employee against liability incurred in or as a result of the Proceeding if the Corporate Official or Corporate Employee: (1) conducted himself or herself in good faith; (ii) reasonably believed (A) in the case of a Director acting in his or her official capacity, that his or her conduct was in the Association's best interests, or (B) in all other cases, that the Corporate Official's or Corporate Employee's conduct was at least not opposed to the Association's best interests; and (iii) in the case of any criminal proceeding, the Corporate Official and Corporate Employee had no reasonable cause to believe his or her conduct was unlawful.

(b) Settlement. The termination of any Proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, is not of itself determinative that the Corporate official or Corporate Employee did not meet the applicable standards of conduct as set forth in subsection 8.2(a).

8.3 Indemnification Prohibited. The right of indemnification shall not extend to matters as to which the Corporate Official or Corporate Employee: (i) has been adjudged liable for gross negligence or willful misconduct in the performance of the Corporate Official's or Corporate Employee's duty to the Association; or (ii) in connection with any Proceeding charging improper personal benefit to such Corporate Official or Corporate Employee, in which the party was adjudged liable on the basis that personal benefit was improperly received by such Corporate Official or Corporate Employee (even if the Association was not thereby damaged). Notwithstanding the foregoing, the Association shall indemnify such Corporate Official or Corporate Employee if and to the extent required by the court conducting the Proceeding or any other court of competent jurisdiction to which such Corporate Official or Corporate Employee has applied, if it is determined by such court, upon application by such Corporate Official or Corporate Employee, that despite the adjudication of liability in the circumstances in clauses (i) and (ii) of this subsection 8.3 or whether or not the party met the applicable of conduct set forth in subsection 8.2(a), and in view of all relevant circumstances, the Corporate Official or Corporate Employee is fairly and reasonably entitled to indemnification for such expenses as the court deems proper in accordance with the Colorado Nonprofit Corporation Code.

8.4 Prior Authorization. Any indemnification under Section 8.2 (unless ordered by a court or in accordance with Section 8.5 below) shall be made by the Association only if authorized in the specific case after a determination has been made that the Corporate Official or Corporate

Employee is eligible for indemnification in the circumstances because such Corporate Official or Corporate Employee has met the applicable standards of conduct set forth in subsection 8.2(a) and after an evaluation has been made as to the reasonableness of the Expenses. Any such determination, evaluation and authorization shall be made by the Board of Directors by a majority vote of a quorum of such Board, which quorum shall consist of Directors not parties to the Proceeding, or by such other person or body as permitted by law.

8.5 Success on Merits or Otherwise. Notwithstanding any other provision of this Article 8, the Association shall indemnify such Corporate Official or Corporate Employee to the extent that such party has been successful, on the merits or otherwise, including, without limitation, dismissal without prejudice or settlement without admission of liability, in defense of any Proceeding to which the party was a party against Expenses incurred by such party in connection therewith.

8.6 Advancement of Expenses. The Association may, but shall not be obligated to, pay for or reimburse the Expenses, or a portion thereof, incurred by a party in advance of the disposition of the Proceeding if (a) the party furnishes the Association a written affirmation of such party's good faith belief that he or she has met the standard of conduct described in subsection 8.2(a)(i); (b) the party furnishes the Association a written undertaking, executed personally or on behalf of such party, to repay the advance if it is ultimately determined that the party did not meet such standard of conduct; and (c) authorization of payment and a determination that the facts then known to those making the determination would not preclude indemnification under this Article have been made in the manner provided in Section 8.4. The undertaking required by clause (b) must be an unlimited general obligation of the party, but need not be secured and may be accepted without reference to financial ability to make repayment.

8.7 Payment Procedures. The Association shall promptly act upon any request for indemnification, which request must be in writing and accompanied by the order of court or other reasonably satisfactory evidence documenting disposition of the Proceeding in the case of indemnification under Section 8.4 and by the written affirmation and undertaking to repay as required by Section 8.5 in the case of indemnification under such Section 8.6. The right to indemnification and advances granted by this Article shall be enforceable in any court of competent jurisdiction if the Association denies the claim, in whole or in part, or if no disposition of such claim is made within 90 days after written request for indemnification is made. A party's Expenses incurred in connection with successfully establishing such party's right to indemnification, in whole or in part, in any such Proceeding shall also be paid by the Association.

8.8 Notification to Members. Any indemnification of or advance of Expenses to a Director (but not to any other party) in accordance with this Article, if arising out of a Proceeding by or on behalf of the Association shall be reported in writing to the Members with or before the notice of the next meeting of Members.

8.9 Authority to Insure. The Association may purchase and maintain liability insurance on behalf of any Corporate Official or Corporate Employee against any liability asserted against him

and incurred by him as a Corporate Official or Corporate Employee or arising out of his status as such, including liabilities for which a Corporate Official or Corporate Employee might not be entitled to indemnification hereunder.

8.10 Right to Impose Conditions of Indemnification. The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article, such reasonable requirements and conditions as may appear appropriate to the Board of Directors in each specific case and circumstances, including, but not limited to, any one or more of the following: (a) that any counsel representing the party to be indemnified in connection with the defense or settlement of any proceeding shall be counsel mutually agreeable to the party and to the Association; (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any Proceeding made, initiated, or threatened against the party to be indemnified; and (c) that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified party's right of recovery, and that the party to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

8.11 Other Rights and Remedies. The indemnification provided by this Article shall be in addition to any other rights which a party may have or hereafter acquire under any law, provision of the Articles of Incorporation, any other or further provision of these Bylaws, vote of the Members or Board of Directors, agreement, or otherwise.

8.12 Applicability; Effect. The indemnification provided in this Article shall be applicable to acts or omissions that occurred prior to the adoption of this Article, shall continue as to any party entitled to indemnification under this Article who has ceased to be a Director, officer, or employee of the Association. The repeal or amendment of this Article or of any Section or provision hereof that would have the effect of limiting, qualifying, or restricting any of the powers or rights of indemnification provided or permitted in this Article shall not, solely by reason of such repeal or amendment, eliminate, restrict, or otherwise affect the right or power of the Association to indemnify any person, or affect any rights of indemnification of such person, with respect to any acts or omissions that occurred prior to such repeal or amendment. All rights to indemnification under this Article shall be deemed to be provided by a contract between the Association and each party covered hereby.

8.13 Indemnification of Agents. The Association shall have the right, but shall not be obligated, to indemnify any agent of the Association not otherwise covered by this Article to the fullest extent permissible by the laws of Colorado. Unless otherwise provided in any separate indemnification arrangement, any such indemnification shall be made only as authorized in the specific case in the manner provided in Section 8.3.

8.14 Saving Clause; Limitation. If this Article or any Section or provision hereof shall be invalidated by any court on any ground, or if the Colorado Nonprofit Corporation Act is amended in such a way as to affect this Article, then the Association shall nevertheless indemnify each party otherwise entitled to indemnification hereunder to the fullest extent permitted by law or any

applicable provision of this Article that shall not have been invalidated.

9. MISCELLANEOUS.

9.1 Amendment of Bylaws. Subject to any approval or requirements of the FHA or VA or of First Mortgagees required under the Declaration, the Board of Directors shall have the power to alter, amend or repeal these Bylaws or any provision herein, or to adopt new Bylaws. Notwithstanding the foregoing, no alteration or amendment shall result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer. Further, the Members, at a meeting called for that purpose, shall also have the power to alter, amend or repeal these Bylaws or any provision herein, or to adopt new Bylaws. The Bylaws may contain any provision for the regulation or management of the affairs of the Association not inconsistent with law, the Declaration or the Articles of Incorporation, except that no amendment to Section 11 hereof or its subsections may be made without Declarant's prior written consent.

9.2 Execution, Certification and Recording Amendments to Declaration. The President, or the Vice President in the President's absence, and the Secretary of the Association shall prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

9.3 Compensation of Officers, Directors and Members. No Director or Officer shall have the right to receive any compensation from the Association for serving as such Director except for reimbursement of expenses as may be approved by resolution of disinterested members of the Board of Directors.

9.4 Books and Records. The Association shall keep correct and complete books and records of account and shall keep, at its principal office in Colorado, a record of the names and addresses of its Members, including Declarant, and copies of the Declaration, the Articles of Incorporation and these Bylaws which may be purchased by any Member at reasonable cost. All books and records of the Association, including the Articles of Incorporation, Bylaws as amended and minutes of meetings of Members and Directors may be inspected by any Member, or his agent or attorney, and any First Mortgagee of a Member for any proper purpose. The right of inspection shall be subject to any reasonable rules adopted by the Board of Directors requiring advance notice of inspection, specifying hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

9.5 Annual Report. The Board of Directors shall cause to be prepared and distributed to each Member and to each First Mortgagee who has filed a written request therefor, not later than 90 days after the close of each fiscal year of the Association, an annual report of the Association containing (a) an income statement reflecting income and expenditures of the Association for such fiscal year; (b) a balance sheet as of the end of such fiscal year; (c) a statement of changes in financial position for such fiscal year; and (d) a statement of the place of the principal office of the Association where the books and records of the Association, including a list of names and addresses

of Members, may be found. The financial statements of the Association shall be reviewed by an independent public accountant and a report based upon such review shall be included in the annual report.

9.6 Statement of Account. Upon written request of an Owner of a Lot or any person with any right, title or interest in a Lot or intending to acquire any right, title or interest in a Lot, the Association shall furnish a written statement of account setting forth the amount of any unpaid assessments, or other amounts, if any, due or accrued and then unpaid with respect to the Lot, the Owner of the Lot and the amount of the assessments for the current fiscal period of the Association payable with respect to the Lot. Such statement shall be issued within fourteen (14) business days after receipt of such request by the Association and, with respect to the party to whom it is issued, shall be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other assessments have then been levied.

9.7 Biennial Corporate Reports. The Association shall file with the Secretary of State of Colorado, within the time prescribed by law, biennial Corporate reports on the forms prescribed and furnished by the Secretary of State and containing the information required by law and shall pay the fee for such filing as prescribed by law.

9.8 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end the succeeding December 31 except that the first fiscal year shall begin on the date of incorporation. The fiscal year may be changed by the Board of Directors without amending these Bylaws.

9.9 Seal. The Board of Directors may adopt a seal which shall have inscribed thereon the name of the Association and the words "SEAL" and "COLORADO."

9.10 Shares of Stock and Dividends Prohibited. The Association shall not have or issue shares of stock and no dividend shall be paid and no part of the income or profit of the Association shall be distributed to its Members directors or officers. Notwithstanding the foregoing sentence, the Association may issue certificates evidencing membership therein, may confer benefits upon its Members in conformity with its purposes and, upon dissolution or final liquidation, may make distributions as permitted by law, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income or profit.

9.11 Loans to Directors and Officers Prohibited. No loan shall be made by the Association to any Director or officer, and any Director or officer who assents to or participates in the making of any such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

9.12 Limited Liability. As provided in the Articles of Incorporation and Declaration, the Association, the Board of Directors, the Design Review Committee, Declarant, and any Member, agent or employee of any of the same, shall not be liable to any Person for any action or for any failure to act if the action taken or failure to act was in good faith and without malice.

9.13 Special Rights of First Mortgagees. Any First Mortgagee of a Mortgage encumbering any Lot in the Community Area, upon filing a written request therefor with the Association, shall be entitled to (a) receive written notice from the Association of any default by the Mortgagor of such Lot in the performance of the Mortgagor's obligations under the Declaration, the Articles of Incorporation, these Bylaws or Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within 90 days following the end of any fiscal year of the Association; (d) receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive written notice of abandonment or termination of the Declaration; (g) receive 30 days written notice prior to the effective date of any proposed, material amendment to the Declaration, the Articles of Incorporation or these Bylaws; and (h) receive immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Association Properties if the cost of reconstruction exceeds \$10,000 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

9.14 Minutes and Presumptions Thereunder. Minutes or any similar record of the meetings of Members, or the Board of Directors, when signed by the Secretary or acting Secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

9.15 Record of Mortgages. Under the Declaration, First Mortgagees have certain special rights. Therefore, any such First Mortgagee or, upon the failure of such First Mortgagee, any Member who has created or granted a First Mortgage, shall give written notice to the Association, through its Manager, or through the Secretary in the event there is no Manager, which notice shall give the name and address of the First Mortgagee and describe the Lot encumbered by the First Mortgage. The Association shall maintain such information in a book entitled "Record of First Mortgages on Lots." Any such First Mortgagee or such Member shall likewise give written notice to the Association at the time of release or discharge of any such First Mortgage.

9.16 Checks, Drafts and Documents. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons, and in such manner as, from time to time, shall be determined by resolution of the Board Directors

9.17 Execution of Documents. The Board of Directors, except as these Bylaws otherwise provide, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

10. NOTICE AND HEARING PROCEDURE.

10.1 Notice and Hearing. In all instances where the Colorado Common Interest Ownership Act as amended from time to time, the Colorado Revised Nonprofit Corporation Act, as amended from time to time, the Declaration, these Bylaws or any Rules and Regulations of the Association require notice and hearing, the Board of Directors shall comply with a written policy adopted by the Board of Directors that provides:

a. Not less than fifteen days prior written notice of the action to be taken and the reasons for such action;

b. An opportunity for the affected member ("Respondent") to be heard, orally or in writing, not less than five days before the action to be taken by either the Board of Directors or a tribunal appointed by the Board of Directors as provided herein;

c. That the action taken shall be fair and reasonable taking into consideration all of the relevant facts and circumstances.

For all purposes of this section, notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Member or to any other mailing address designated in writing by the Member. Notice shall be deemed delivered, if hand delivered upon delivery, and if sent by United States mail, three days after mailing.

10.2 Tribunal. In any instance that requires a hearing, the President may appoint Hearing Committee ("Tribunal") of three natural Persons who need not be Members of the Association. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing next-door neighbors of the Respondent or any Members who are essential witnesses to the alleged violation giving rise to the Complaint. The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence at the hearing. In the event of such a challenge, the Board of Directors shall meet to determine the sufficiency of the challenge, without the President voting. If such a challenge is sustained, the President shall appoint another member to replace the challenged member of the Tribunal. All decisions of the Board of Directors in this regard shall be final. The Tribunal shall elect a chairman and appoint a hearing officer who shall take evidence and ensure that a proper record of all proceedings is maintained.

11. CONSTRUCTION LITIGATION NOTICE AND HEARING PROCEDURES.

11.1 Association's Enforcement Rights. In the event of an alleged defect in (i) the soils of any property which lie within the Common Area or any part or parcel thereof or any Improvement thereon, (ii) the physical condition of any Improvement on a Common Area, or (iii) any Improvement to Property (collectively, a "Defect"), or in the event of any other claim for any other alleged matter whatsoever, including without limitation, a breach of the Declaration, the Articles or

the Bylaws (collectively a "General Claim"), brought by the Association against Declarant or any Participating Builder (collectively, the Developer"), this Article shall control and the Board of Directors shall have the right, after complying with the procedures set forth in this Article and upon an affirmative vote of majority of the Board and of a majority of the Members as hereinafter provided, to proceed with a cause of action against the Developer for any of the foregoing reasons.

11.2 Written Notice. The Association shall be required to give written notice to the Developer specifying the particular Defect which is the subject of the claim, including identification of the affected property, Improvements and Improvements to the Property, and specifying the facts and circumstances supporting any General Claim. Within thirty (30) days following receipt of the notice, the Developer shall make a written request to inspect the same in order to evaluate the Defect or the General Claim. Such request shall have the effect of tolling all statutes of limitations to a noticed claim until (30) days after the Developer delivers written notice to the Association canceling the tolling.

11.3 Developer Inspections. The Association shall allow the Developer to inspect all property, Improvements and Improvements to Property identified in the Association's notice. A majority of the Board of Directors shall be required to meet and confer with the Developer on at least one occasion to discuss the alleged Defect or General Claim. Either party may be represented at the meeting by attorneys and independent consultants. The Association shall be required to make arrangements for the Developer, at the Developer's cost, to do reasonable destructive testing, provided that the Developer shall pay all costs to restore all property, Improvements and Improvements to the Property to its original condition and indemnify the Association against any liability for such destructive testing. All inspections and destructive testing must be completed within thirty (30) days following the property, Improvements or Improvements to Property being made available.

11.4 Developer Settlement Proposal. Within thirty (30) days after completion of the inspection and destructive testing, the Developer shall submit a written statement to the Association setting forth the Developer's proposed settlement of each claim of Defect and General Claim and the reasons therefor, and stating whether the Developer proposes to do any necessary work or to pay the Association a cash sum in lieu thereof. A majority of the Board of Directors shall be required to meet and confer with the Developer on at least one occasion to discuss the proposed settlement, if any. Either party may be represented at the meeting by attorneys or independent consultants. If the Developer does not deliver such a written statement to the Association within thirty (30) days following completion of the destructive testing, the Association shall have the right to institute a cause of action against the Developer in accordance with the procedures set forth herein.

11.5 Lawsuit Against the Developer. The consent of a majority of Members of the Association entitled to vote thereon must be obtained before the Association shall have the power to institute a cause of action against the Developer for the Defect or the General Claim. However, such consent must be obtained by the Association only after it delivers ballots to all Members of the Association in accordance with the notice procedures set forth in the Bylaws with respect to special

meetings. Such delivery shall also include written materials which provide:

- (a) a statement of the Defect or General Claim;
 - (b) a copy of the Developer's written response thereto, including any settlement proposal;
 - (c) a statement advising Members of their duty to disclose to prospective purchasers and lenders the General Claim or Defect which the Association will assert against the Developer;
 - (d) a statement that recovery from litigation may not result in receipt of funds to pay all costs of repairing the Defect or remedying the General Claim as estimated by experts retained by the Association;
 - (e) an estimate of the cost to the Association in prosecuting the cause of action;
- and
- (f) a description of the agreement with the attorney whom the Board proposes to retain to prosecute the cause of action;

All communications by the Association to the Members shall be deemed privileged communications.

11.6 Liability of Directors or Officers for Failure to Maintain an Action Against the Developer. No officer or director of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion such cause of action if the following criteria are satisfied:

- (a) the officer or director was acting within the scope of his duties;
- (b) the officer or director was acting in good faith; and
- (c) the act or omission was not wilful, wanton or grossly negligent.

11.7 Alternative Dispute Resolution. Any Association claim of a Defect or a General Claim shall, upon the demand of the Association or the Developer, be submitted to mediation or binding arbitration, subject to the following requirements:

- (a) if the parties cannot agree upon utilizing binding arbitration or mediation, but one of the parties wants to utilize an alternative dispute method, binding arbitration shall be utilized;
- (b) the arbitrator or mediator must be a person qualified, either with applicable industry experience or legal experience with respect to the claim of Defect or General Claim to consider and resolve the applicable claim and shall be unbiased;

(c) if the parties cannot agree upon an arbitrator or mediator, either party may petition the District Court of the county in which the applicable portion of the Association Area is located to appoint such arbitrator or mediator;

(d) the fees and costs of the arbitrator or mediator and its consultants shall be borne equally by the Association and by the Developer;

(e) the arbitrator or mediator shall have authority to establish reasonable terms regarding inspections, destructive testing, and retention of independent consultants;

(f) the arbitrator or mediator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;

(g) the arbitrator or mediator shall issue a written report determining all claims, including all defenses raised by Developer, and which shall include a recommendation for settlement (in case of mediation) or a binding arbitration award;

(h) all statutes of limitations on any claim subject to the mediation shall be tolled for the period of mediation, but no longer than 120 days;

(i) the Developer shall have the right to allow subcontractors to participate in the arbitration or mediation proceedings to determine indemnification rights and obligations, provided that the Association is not made to bear the cost of resolution of such indemnity issues; and

(j) any arbitration shall be determined under the American Arbitration Association ("AAA") Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article the ("AAA Rules"). Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within 120 days of the demand, and concluded within 3 days. These time limits are not jurisdictional. The arbitrator shall apply substantive law and may award injunctive relief or any other remedy available in Colorado including attorney fees and costs to the prevailing party, but shall not have the power to award punitive damage.

11.8 Utilization of Funds Resulting from the Cause of Action. In the event the Association receives funds as the result of any settlement, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall:

(a) deposit the proceeds in a special, interest bearing account; and

(b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the claim of Defect or for purposes of remedying

the General Claim.

These First Amended and Restated Bylaws of TrailMark Homeowners Association, Inc. shall supersede, in their entirety, the Bylaws of Chatfield Green Homeowners Association.

IN WITNESS WHEREOF, we, being all of the Directors of TrailMark Homeowners, Inc. have hereunto set our hands this 19th day of August, 1999.

Steve Orniston
Director

Lisa Spadey
Director

Y. Kushnik
Director

[Signature]
Director

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of TrailMark Homeowners Association, Inc., a Colorado nonprofit corporation, and that the foregoing First Amended and Restated Bylaws constitute the Bylaws of said Association, as duly adopted at a meeting of the Board thereof, held on August 19, 1999.

Signed this 19th day of August, 1999.

Lisa Spadey
Secretary