

**BY-LAWS  
OF  
SODA CREEK PROPERTY OWNERS ASSOCIATION, INC.**

Adopted May 3, 1983

**ARTICLE I. NAME; CORPORATION NOT FOR PROFIT**

The name of this organization is Soda Creek Property Owners' Association, Inc. (hereinafter referred to as "Association"), a non-profit organization.

**ARTICLE II. OBJECT**

The object of this Association shall be to provide for maintenance, preservation and architectural control of the property subject to the control of the Association (hereinafter referred to as the "Subdivision") and to promote the health, safety and welfare of the residents within said Subdivision.

**ARTICLE III. COVENANTS**

The Declaration of protective Covenants for Soda Creek, Jefferson County, Colorado (hereinafter referred to as "Declaration") was made the first day of October, 1975, by Gayno, Inc., a Colorado corporation and, as amended from time to time, shall bind and govern the use of the Subdivision to the extent applicable.

**ARTICLE IV. MEMBERSHIP**

**Section 1. Membership.** Every person or entity who is a record owner of a full or undivided interest in any Lot within the Subdivision, or any other property hereinafter made subject to the Declaration in accordance with the Declaration, Articles of Incorporation and these Bylaws (hereinafter referred to as "Owner") shall automatically be a member of this Association (hereinafter referred to as "Member") and be subject to these Bylaws.

**Section 2. Compliance with Bylaws.** All present or future owners, tenants, or any other person who might in any manner use the Subdivision are subject to the regulations and the provisions of the Articles of Incorporation, the recorded Declaration, and these Bylaws and amendments thereto and all published rules and regulations of the Association. The mere acquisition or rental of a lot (hereinafter "Lot") or the mere act of occupying and Lot will signify that these Bylaws are accepted, ratified and will be complied with.

**Section 3. Good Standing.** A Member shall be deemed in good standing and entitled to vote at any annual or at a special meeting of the Members, within the meaning of these Bylaws if, but only if, (A) he shall have fully paid all dues and assessments made or levied, (B) if proof of ownership is furnished when requested by the Board of Directors as set forth in Section 4.C. of this Article, and (C) if the owner's mailing address has been registered with the Association in accordance with Article VIII. Section 4.

**Section 4. Voting.**

**A. Eligibility to Vote.** The Association shall have one (1) class of voting Members. Each Lot shall be entitled to one vote. A Member must be in good standing, according to Section 3 of this Article, in order for his Lot's vote to be eligible. When more than one (1) person shall hold an ownership interest or interests in any Lot, all such persons shall be Members. Fractional votes are not permitted in cases where there are multiple owners of a single lot.

**B. Designation of Voting Representative – Proxies.** Votes may be cast in person or by proxy. If a Lot is owned by one person, his right to vote shall be established by the record title thereto and the Member's good standing in the Association. If a lot is owned by two persons, then the owners may jointly appoint one of them or another person or alternate persons as their proxy to cast their vote, or in the absence of joint action one of them may cast their vote or appoint another person or alternate persons as their proxy

to cast their vote, provided that if the other owner objects or attempts to vote, or appoints a different person or persons as proxy then the owners of the lot shall not be eligible to vote. If a lot is owned by more than two persons or by a firm, corporation, partnership, association or other legal entity, or any combination thereof, then such Owners shall execute a proxy appointing and authorizing one person or alternate persons to attend all annual and special meetings of Members and thereat to cast whatever vote the Owner himself might cast if he were personally present. Such entity shall be effective and remain in force unless voluntarily revoked, amended, or sooner terminated by operation of law; provided, however, that within thirty (30) days after revocation, amendment or termination, the Owners shall reappoint and authorize one person or alternate persons to attend all annual and special meetings. Proxies must be filed with the Secretary before the call to order of each meeting.

**C. Proof of Ownership.** Any person as requested by the Board of Directors shall furnish to the registered agent (President of the Association) proof of ownership in form satisfactory to the Board. A Member shall not be deemed to be in good standing, nor shall he be entitled to vote at any annual or at a special meeting of Members if the directors have requested such proof of ownership, but the proof has not been furnished.

**D. Majority of Votes.** As used in these Bylaws, the term "Majority of Votes" shall mean one vote more than fifty percent (50%) of the votes cast in person or by proxy, on any issue submitted to a vote of the lots at a meeting at which a quorum is present.

**Section 5. Termination of Membership.** Membership shall terminate without any formal Association action whenever such person ceases to own such Lot, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under or in any way connected with this Association during the period of such ownership and membership in this Association.

#### ARTICLE V. DUES AND ASSESSMENTS

**Section 1. Annual Dues.** Annual dues shall be \$350.00 for residences or \$262.50 for unimproved land for each lot and shall be payable by the Owner of such Lot on or before the last day of January of each year. The amount of dues will not be changed until a notice is sent to all Members and the matter is discussed at a subsequent meeting of the Board of Directors of the Association (hereinafter referred to as "Directors").

**Section 2. Special Assessments.** If, under the existing circumstances, the Directors deem it necessary or advisable to have a special assessment in any calendar year, then upon fifteen (15) days' written notice, the Owner shall pay such special assessment to the Association. Before a special assessment is made, a notice will be sent to the Members explaining why the assessment is necessary and inviting Members to attend an open Directors' meeting to discuss the matter.

**Section 3. Failure to Pay.** If a Member fails to pay dues or special assessments, he shall lose his good standing the day following the due date, until the assessment or dues are paid.

#### ARTICLE VI. FISCAL MANAGEMENT

**Section 1. Accounts.** The funds and expenditure by and through the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be part of the common assessments:

- A. *Current expense*, which shall include all funds and expenditures within the current year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or additional improvements.
- B. *Reserve for deferred maintenance*, which shall include funds for maintenance items which occur less frequently than annually.
- C. *Reserve for replacements* (sinking fund) which shall include funds for repair or replacement required because of damage, wear or obsolescence.

**Section 2. Audit.** All expenditures and budgets shall be audited annually by a certified public accountant or a committee of Association Members selected by the Board of Directors who are not Directors.

**Section 3. Fidelity Bonds.** The Board of Directors, at its sole discretion, may require that any or all officers or employees of the Association shall furnish adequate fidelity bonds. The premiums on such bonds shall be a common expense of the Association, to be included in the annual assessment herein provided.

**Section 4. Compensation and Reimbursement.** No Member, Director, Officer, or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any salary or compensation from the funds or the assets of the Association; provided, however, always (1) that reasonable compensation may be paid to any Member, Director, or Officer while acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association; and (2) that any Member, Director or Officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

## ARTICLE VII. MEETINGS OF THE ASSOCIATION

**Section 1. Place of Meetings.** Meetings of the Association shall be held at such place as the Directors may determine.

**Section 2. Annual Meeting.** An annual meeting of the Association shall be held at 10:00 a.m. on the second Saturday in the month of September of each year, or as otherwise scheduled by the Directors.

**Section 3. Special Meetings.** It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Directors or upon presentation to the Secretary of a petition signed by owners of at least twenty percent (20%) of the Lots, whose Owners are members in good standing and eligible to vote. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. Any such meeting shall be held within thirty (30) days after receipt by the President of such resolution or petition.

**Section 4. Adjourned Meeting.** If any meeting of members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting, from time to time, until a quorum is obtained.

**Section 5. Notice of Meetings.** Notice of an annual or special meeting of the Members shall be served by mailing a notice stating the time and place of the meeting (and if a special meeting, the purpose thereof). Such notice shall be mailed at least five (5) days, but not more than twenty (20) days, prior to the date of the meeting.

**Section 6. Quorum.** A quorum shall be constituted by the holders of thirty percent (30%) of the outstanding votes of the Association appearing in person or by proxy.

## ARTICLE VIII. ADMINISTRATION

**Section 1. Administration of the Association.** The affairs of the Association shall be managed by the Directors who shall be selected in the manner set forth in Section 2 of Article IX.

**Section 2. Registered Agent.** The registered agent shall be the President of the Association.

**Section 3. Principal Office.** The principal office of the Association shall be the home of the registered agent.

**Section 4. Registration of Mailing Address.** The Owners or the several Owners of a Lot shall have one and the same registered mailing address to be used by the Association for mailing of monthly statements, notices, demands and all other communications. Such registered address of an Owner or Owners shall be furnished by such Owners to the registered agent within fifteen (15) days after transfer of title or after a change of address, and such registration shall be in written form and signed by all of such Owners or by such persons as are authorized by law to represent the interest of all the Owners thereof.

**Section 5. Effect of Violation.** Violations of the provisions in the Articles of Incorporation, the Declaration, or these Bylaws shall give the Directors the power, among any other remedies provided for herein, to suspend the Owner's right to vote at any annual or special meeting and to suspend enjoyment of rights of Owner to all common areas while in violation of this provision.

**Section 6. No Waiver of Rights.** The omission or failure of the Association to any Owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, or other provisions of the Articles of Incorporation, the Declaration, the Bylaws, or the regulations and rules adopted pursuant thereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Directors shall have the right to enforce the same thereafter.

**Section 7. Authorized Signatures.** The persons who shall be authorized to execute any and all contracts, documents, instruments of conveyance, are the President, Secretary, or Treasurer of the Association.

## **ARTICLE IX. BOARD OF DIRECTORS**

**Section 1. Composition.** The affairs of the Association shall be governed by the Directors consisting of five (5) persons to be elected from among the Members by the Lots eligible to vote.

**Section 2. Election and Term of Office.** The term of office of the Directors shall be for a term of two (2) years or until the election and qualification of their successors. Members of the Directors shall be elected by the majority of votes represented in person or by proxy at the annual meeting with a quorum present.

**Section 3. Vacancies.** Vacancies in the Office of Director caused by reason other than removal of a Director by a vote of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

**Section 4. Removal of Directors.** Any one or more of the Directors may be removed, at any annual or special meeting of the membership by two-thirds (2/3rds) of the votes represented in person or by proxy when a quorum is present. Any such successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting.

### **Section 5. Meetings of the Directors.**

- A. First Meeting of Newly Elected Directors.** The first meeting of the newly elected Directors following the Annual meeting of the Members shall be held within ten (10) days thereafter at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, providing a majority of the Directors shall be present.
- B. Regular Meetings.** Regular meetings of the Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one such meeting shall be held during each calendar year. Notice of regular meetings of the Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.
- C. Special Meetings.** Special meetings of the Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph. Special meetings of the Directors shall be called by the President or Secretary in like manner and on like notices on the written request of at least three (3) Directors.
- D. Board of Directors Quorum.** A majority of the Directors shall constitute a quorum.

- E. Waiver of Notice.** Before or at any meeting of the Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors need be specified in the notice or waiver of notice of such meeting.
- F. Presumption of Assent.** A Director who is present at the meeting of the Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as Secretary of the meeting before the adjournment thereof. Such right to dissent shall not apply to Directors who voted in favor of such action.
- G. Informal Action by Directors.** Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of Directors, and may be stated as such in the Articles of Incorporation or documents filed with the Secretary of State.

**Section 6. Powers and Duties.** The Directors shall have all of the powers which are designated in the statutes of the State of Colorado as being vested in the Directors of nonprofit corporations, and shall have the duty of administering the affairs of the Association in such a manner as to assure a first-class, planned residential development.

**Section 7. Amplification.** The powers and duties of the Directors as above enunciated shall include, by way of amplification but not by way of limitation, the following:

- A. To administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the Declaration submitting the Subdivision to the provisions therein set forth, the Bylaws of the Association, and any supplements and amendments thereto.
- B. To establish, make and enforce compliance with such reasonable rules as may be necessary for the operation and use of the Subdivision including the common areas, with the right to amend same from time to time. A copy of such rules and regulations shall be delivered or mailed to each Member promptly upon the adoption thereof.
- C. To keep in good order, condition, and repair all of the common property and all items of common personal property used by the Owners in the enjoyment of the Subdivision.
- D. To prepare a budget for the Members at least annually to determine the amount of the common assessments payable by the Members to meet the budget, and allocate and assess such assessments among the Members at the same rate for all Lots; by majority vote of the Directors to adjust, decrease, or increase the amount of assessments, and remit or return any excess of assessments over expenses, working capital, sinking funds, reserve for deferred maintenance and replacement to the Members at the end of each operating year; to levy and collect special assessments whenever in the opinion of the Directors it is necessary to do so in order to meet increased operating or maintenance expenses or costs, legal expenses, or additional capital expenses, or because of emergencies or to otherwise perform its maintenance and repair functions.
- E. To collect delinquent assessments by suit or otherwise and to enjoin or seek damages from a Member as is provided in the Declaration or these Bylaws. To enforce a late charge of not more than ten percent (10%) of the amount of each delinquent installment, and to collect interest at the rate of eighteen percent (18%) per annum in connection with the assessments remaining unpaid more than thirty (30) days from the due date for payment thereof, together with all expenses of collection, including any reasonable attorney's fees.

- F. To protect and defend the common property from loss and damage by suit or otherwise.
- G. To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and by these Bylaws, to mortgage and encumber common property upon approval of the Members by a two-thirds (2/3rds) vote, and to execute all such instruments evidencing such indebtedness as the Directors may deem necessary.
- H. To enter into contracts within the scope of their duties and powers.
- I. To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable by the Directors.
- J. To make repairs, additions, alterations and improvements to the common areas and improvements thereon.
- K. To cause full and accurate books and records to be maintained which reflect all receipts, expenses or disbursements.
- L. To prepare and make available at the annual meeting to each Member a statement showing receipts, expenses or disbursements since the last such statement.
- M. To employ the personnel necessary for the operation of the Association.
- N. In general, to carry on the administration of this Association, and to do all those things necessary and reasonable in order to carry out the governing and operation of this Association and to implement the provisions of the Declaration.
- O. To establish the dates for payment of any general or special assessment.
- P. To establish fidelity bonds as provided in Article VI.
- Q. To appoint special committees, as needed.

## **ARTICLE X. OFFICERS**

**Section 1. Elected Officers.** The Officers of the Association shall be a President and a Vice President, both of whom shall be elected by and from the Directors.

**Section 2. Election and Term of Office.** The Officers of the Association shall be elected annually by a majority of the Directors at the organization meeting of the Directors and shall hold office at the pleasure of the Directors.

**Section 3. Removal of the Elected Officers.** Upon an affirmative vote of a majority of the Directors, any Officer may be removed, whether with or without cause, and his successor elected at any regular or special meeting of Directors.

**Section 4. Appointed Officers.** A Secretary, a Treasurer, and such other Officers as needed shall be appointed from the membership by the Directors. They shall have no vote. Their term of office coincides with the Board that appoints them, but they can be reappointed. Appointed Officers may be removed at any time by a majority vote of the Directors.

**Section 5. President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Directors. He shall have all of the general powers and duties which are usually vested in the office of president of a nonprofit corporation. The President may sign with the Secretary, or any other proper Officer of the Association authorized by the Directors, any instruments which the Directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Directors or by these Bylaws to some other Officer or agent of the Association.

**Section 6. Vice President.** The Vice President shall have all the powers and authority and perform all the functions and duties of the President in the absence of the President or at the request of the President.

**Section 7. Secretary.** The Secretary shall be responsible for the minutes of the meetings of the Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Directors may direct; and he shall, in general, perform all of the duties incident to the office of Secretary as provided in the Declaration and these Bylaws. The Secretary shall compile and keep up to date a complete list of Members, the number of votes held and their last known addresses as shown on the records of the Association. Such list shall also show opposite each Member's name the number or other appropriate designation of the Lot and address thereof owned by such Member. Such list shall be open to inspection by Members and other persons affiliated with the Association in such depositories as may from time to time be designated by the Directors.

**Section 8. Treasurer.** The Treasurer shall have the responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit and disbursement of all monies and valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Directors. He shall be responsible for seeing that notices of annual dues are in the mail by December 1 and notices of special assessments are in the mail thirty (30) days before the assessment is due.

#### **ARTICLE XI. INDEMNIFICATION OF OFFICERS AND DIRECTORS**

**Section 1. Indemnification.** Each person who may have served as a Director, Officer, employee, or agent of the Association, including members of its Architectural Control Committee, Pond Committee, or any other committee appointed by the Directors, shall be indemnified by the Association against liability imposed upon him or her and expenses reasonably incurred in connection with any claim made against such person, or any action, suit, or proceeding to which he or she may be made a part by reason of being, or having been such an Officer, Director, employee, agent, or Committee member, and against such sums as counsel selected by the Directors deems reasonable payment made in settlement of any such claim, action, suit, or proceedings. No such Director, Officer, employee, agent, or Committee member shall be indemnified with respect to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in performance of duty, or with respect to any matter which shall be settled by the payment of sums which counsel selected by the Directors does not deem reasonable payment made primarily with a view to avoiding expenses of litigation, or as to matters for which such indemnification would be against public policy.

**Section 2. Fund Advancement.** Prior to the final disposition of any action, suit, or proceeding, the Association may advance monies for expenses incurred by any person who might be eligible for indemnification hereunder upon receipt of an undertaking by or on behalf of such person to repay all amounts advanced unless it is ultimately determined that he is entitled to be indemnified and will be indemnified by the Association hereunder.

**Section 3. Common Expense of Members.** All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of or in connection with the foregoing indemnification provisions shall be treated as a common expense of the Association to be met by annual assessments as provided in the Declaration.

#### **ARTICLE XII. ARCHITECTURAL CONTROL COMMITTEE**

**Section 1. Establishment of Committee.** There is hereby established an Architectural Control Committee (hereinafter referred to as "Committee") consisting of at least three (3), but not more than seven (7), Members appointed by the Directors of the Association who shall be Members of the Association or designated representatives of an organization or entity which is a Member. The vote of a majority of the Members of the Committee shall constitute the action of such Committee. The term of each Member of the Committee shall be two years, unless otherwise specified by the Directors.

**Section 2. Review by Committee.** Before erecting any structure or making any exterior improvements on any Lot, as set forth in the Declaration of Protective Covenants for Soda Creek, as amended from time to time, each

Owner must submit to the Committee complete written plans and specifications, as defined in the Declaration, and obtain the Committee's approval in writing according to the procedures outlined below. All reviews conducted by the Committee shall be in accordance with the standards set forth in the Declaration. A copy of such plans and specifications as finally approved shall become the property of the Committee. The Committee shall have the right to charge persons submitting such plans and specifications a reasonable fee for reviewing the application for approval of plans. The current fee schedule shall be as follows:

- New Home Construction or Major Remodel:  
Major Remodel would be defined as two or more elevation changes, foundation changes or increase in square footage of 20% or more. Any additional professional services required during the review process to be paid by the property owner. Fee: \$600
- New Outbuilding Construction or Renovation:  
Construction of any new structure on property with existing home to include, but not limited to, barns and garages. Less extensive renovations such as single elevation change. Fee: \$300
- Exterior Changes:  
Changes that do not meet the criteria for New Home or Major Remodel but may include a single elevation change, new materials on the exterior, reconfiguring of access, outdoor pools or tennis courts, landscaping, fencing. Fee: \$100
- There would not be fees assigned to smaller projects such as new roof, paint changes, deck additions or other changes not requiring site visits and extensive storage of plans and drawings.

Such fee shall be payable at the time of submission by the Owner or his agent of the plans and specifications to the Committee.

**Section 3. Conformance with Plan.** The Committee shall exercise its best judgment to determine that all attachments, exterior improvements, constructions, landscaping, and alterations to structures on lands within the Subdivision conform to and harmonize with existing surrounding structures according to the standards set forth in the Declaration. As a condition to approval of the plans, the Owner of said Lot shall agree in writing to exterior onsite inspections as necessary by a Member of the Committee during the construction period to see that approved plans are being followed. The obligation to perform the inspection is that of the Committee. Provided, however, that failure to inspect or enforce compliance after inspection shall not be deemed a waiver of the responsibility of the Committee or of the right to enforce the Declaration and these Bylaws.

**Section 4. Procedures.** The Committee shall approve or disapprove in writing all plans and specifications within thirty (30) days after complete written plans and specifications are delivered by the Owner or legal representative and receipted for by the Committee. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been delivered to it, the plans and specifications shall be deemed approved. If within such thirty (30) day period the Committee rejects such plans, or requests changes therein when the plans are resubmitted, the Committee shall have an additional thirty (30) days upon which to act upon such plans and specifications. Should the plans submitted be disapproved, the Committee shall state to the Applicant in writing: (a) the reasons for disapproval, and (b) steps or changes required to gain approval. An Applicant whose plans have been disapproved may appeal in writing to the Directors at the regularly scheduled Directors' meeting following receipt of the notice of disapproval. The Committee shall advise the Applicant in writing of its decision and upon approval of the plans and specifications shall issue a Certificate of Approval. Verbal approval by the Chairperson or any individual member of the Committee is not acceptable. The issuance of a building permit, or license, which may be in contravention of these Bylaws or of the Declaration of Protective Covenants, shall not prevent the Committee from enforcing these provisions.

**Section 5. Records.** The Committee shall maintain written minutes of its meetings, to include records of all applications submitted to it, and of all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of a business day. The Committee shall provide the Directors with a copy of all letters of approval or disapproval.

**Section 6. Liability.** Neither the Association nor its Committee, nor Officers, nor Members thereof shall be liable for damage to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matters within its jurisdiction hereunder unless the actions resulted from malice and wrongful intent.

**Section 7. Variances.** The Committee may grant reasonable variances or adjustments in writing from any conditions or restrictions imposed by this Article XII or by the Declaration in order to overcome practical difficulties and prevent unnecessary hardship arising by reason of the application of their restrictions contained in this Article XII or the Declaration. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to other parts of the Subdivision or improvements thereon and shall not be contrary to the general intent and purpose thereof.

### ARTICLE XIII. COMMON PROPERTIES

**Section 1. Ownership of Common Properties.** The Association is hereby authorized to own both real and personal property for the benefit of the Association. The Association currently owns certain real property located in Jefferson County, Colorado, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. This real property shall not be sold or otherwise disposed of by the Association except by an affirmative vote by the Owners of at least two-thirds (2/3rds) of the Lots who are eligible to vote. Upon approval by the Directors, the real property may be improved for recreational purposes for the benefit of the Association.

**Section 2. Members, Easements and Right of Enjoyment.** Subject to the provisions hereinafter set forth in this Article XIII, every Member of the Association shall have a right and easement of enjoyment in and to the common properties, and such easements shall be appurtenant to and shall pass with title to every Lot which is subject to these Bylaws.

**Section 3. Reservation of Certain Rights to the Association.** The rights and easements of enjoyment created hereby shall be subject to the following:

- A. The right of the Association, as is provided herein, to suspend the enjoyment rights of any Member for any period of time during which any assessments remain unpaid, and for such period of time as it deems appropriate for any infraction of its published rules and regulations.
- B. The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility company serving the Subdivision for such purposes and on such conditions as may be agreed to by the Members; provided, however, that no such dedication or determination as to the purposes or as to the conditions thereof, if made by the Association, shall be effective unless approved by the consent of the Owners of two-thirds (2/3rds) of the Lots eligible to vote, upon written ballot which shall be sent to all Members at least thirty (30) days in advance of the canvass therefore, and which shall set forth the reasons for the proposed action.
- C. The right of the Association to grant easements and/or rights-of-way to such utility companies or public agencies or authorities as it deems necessary for the proper service and maintenance of the Subdivision.
- D. The right of the Association to grant temporary easements upon the common properties for the storage of construction materials, dirt, and similar items to Owners during the construction of improvements upon any areas within the Subdivision; provided, however, that following the completion of such construction, such grantees shall forthwith proceed to remove all materials and dirt from the common property and restore the same to its condition existing immediately prior to their use therefore or to a condition acceptable to the Architectural Control Committee, all at the sole cost and expense of said Owner. If the grantee(s) shall fail to undertake and complete such removal and restoration within sixty (60) days after such completion of construction, the Association, at its option, after giving such grantee ten (10) days prior written notice (unless with said ten-day period such grantee shall proceed and thereafter pursue with diligence such removal and restoration), undertake and complete the removal of all materials and dirt from the common properties and restore the same to their condition existing immediately prior to their use therefore or to a condition acceptable to the Architectural Control Committee. If the Association

undertakes and completes such removal and restoration because of the failure of the grantee to complete the same, the cost of such removal and restoration shall be assessed against the grantee; and if such assessment is not paid within thirty (30) days after written notice of such assessment from the Association to said grantee, it shall constitute a lien on the Lot of such grantee and may be enforced as set forth in the Declaration.

- E. The right of the Association to (1) enter into lease agreements, either as lessee or lessor, with third parties for such purposes and subject to such conditions as it may deem appropriate; (2) enter into contractual or reciprocal agreements with other organizations to provide, receive, or exchange services; provided, however, that the Association shall be fully reimbursed for its costs and expenses incurred in providing such services; (3) contract with governmental entities for the rental and use of equipment and/or exchange for services on a fee basis or otherwise; (4) construct emergency facilities; and (5) erect informational signs as it deems appropriate.

#### **ARTICLE XIV. ABATEMENT AND ENJOINMENT OF VIOLATIONS BY OWNERS**

The violation of any rule or regulation adopted by the Directors, or the breach of any Bylaw, or the breach of any provision of the Declaration or Articles of Incorporation, shall give the Directors the right, in addition to any other rights set forth therein to (1) enter upon the property on which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Member, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions thereof, and the Directors shall not be deemed guilty in any manner of trespass; or (2) to prosecute a proceeding at law or in equity against the Member who has violated or is attempting to violate any of the conditions, covenants, restrictions, and reservations and to enjoin or prevent them from doing so, to cause said violation to be remedied and or to recover damages for said violation. Notwithstanding, no litigation shall be authorized by the Directors until a written legal opinion is obtained by the Board from a licensed attorney who is not a Member of the Association. The opinion shall state fully the possibility of success, consequences which may be anticipated, and approximate legal costs.

#### **ARTICLE XV. SINGULAR AND PLURAL**

Words used herein, regardless of the number or gender specifically used, shall be deemed and construed to include any number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

#### **ARTICLE XVI. PARLIAMENTARY AUTHORITY**

**Section 1. Rules.** The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Association in all cases to which they are applicable and in which they are not inconsistent with the Articles of Incorporation, the Declaration, these Bylaws, and any special rules of order the Association may adopt.

**Section 2. Conflicts.** In the event that these Bylaws conflict with any provision of the Declaration, then the provision contained in the Declaration shall be controlling.

#### **ARTICLE XVII. AMENDMENTS TO BYLAWS**

These Bylaws, except for Article V, may be amended only by the vote of a majority of the Directors, at any duly constituted meeting, provided that notice of the proposed amendments shall be given to all Members, providing for discussion of the proposed amendments at a regularly scheduled or special Directors' meeting, before a vote is taken. Amendments to Article V may be made as provided in that article.

***SPECIAL RULES OF ORDER***

**Order of Business.** The order of business at annual meetings of the Members shall be as follows:

- A. Roll Call and certifying proxies;
- B. Proof of notice of meeting or waiver of notice;
- C. Reading and disposal of unapproved minutes;
- D. Reports of Officers;
- E. Reports of committees;
- F. Election of Directors;
- G. Unfinished business;
- H. New business;
- I. Adjournment