

AMENDED AND RESTATED BYLAWS
OF
THE RAPIDS ON THE COLORADO
HOMEOWNERS ASSOCIATION,
a Colorado Nonprofit Corporation

BYLAWS

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BYLAWS

1. GENERAL.

- 1.1. **Purpose of Bylaws.** These Amended and Restated Bylaws are adopted and effective September 27, 2015 for the regulation and management of the affairs of The Rapids on the Colorado Homeowners Association ("**Association**"). These Amended and Restated Bylaws shall replace and supercede the Bylaws of the Association dated May 27, 1997.
- 1.2. **Association Governance.** The Association was organized as a Colorado corporation under the Colorado Nonprofit Corporation Act to be, and constitutes, the Association under the Amended and Restated Declaration of Protective Covenants for the Rapids on the Colorado Subdivision ("**Declaration**"). The Declaration relates to real property in the County of Garfield, Colorado, which becomes subject to the Declaration (the "**Subdivision**").
- 1.3. **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.
- 1.4. **Controlling Laws and Instruments.** These Bylaws are controlled by and shall always be consistent with the provisions of the Revised Colorado Nonprofit Corporation Act, §§ 7-121-102 et seq. (the "**CRNCA**"), the Declaration and the Articles of Incorporation of the Association filed with the Secretary of State of the 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 Subdivision, the principal office of the corporation shall be located at 2102 West Arapahoe Drive, Littleton, CO 80120.
- 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 (1), all Persons collectively, who constitutes the Owner of a Lot. Person means a natural person, corporation, limited liability company, partnership, association, trust, or any other entity or combination of entities.
- 3.2. **Memberships Appurtenant to Lots.** Each Membership 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 (1) vote for each Lot owned by such Member. During the Period of Declarant Control Declarant, in its sole discretion, shall have the right to appoint Directors, subject to the limitations set forth in Section 5.5.
- 3.4. **Voting by Joint Owners.** If there is more than one (1) 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 (1) 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 (1) such Person shall be entitled to cast, in person or by proxy, the vote attributable to the Lot. If, however, more than one (1) Person constituting such Owner attends a meeting in person or by proxy, then such Persons shall designate one (1) 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 vote for that Unit shall not be considered in determining the particular matter proposed or issue requiring approval. 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, the voting rights of a Member during any period of breach by such Member of any provision of the Declaration or of any Rule or Regulation adopted by the Association including, but not limited to, the failure to pay any assessment pursuant to the Declaration and for a period of up to ten (10) days following the cure of any such breach by such Member; provided, however, such Notice and Hearing shall not be required where a Member has failed to pay any assessment levied in accordance with the provisions of the Declaration or any payment policy adopted pursuant thereto.

3.7. Determination of Member Voting Percentage. Notwithstanding anything to the contrary contained 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.

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 Subdivision, as may be fixed by the Board of Directors and specified in the notice of the meeting.

4.2. Annual Meetings of Members. The annual meetings of the Association shall be held each year on such date as shall be selected by the Board. Notwithstanding the date of all future annual meetings, the first annual meeting after the conveyance of any Lot to an Owner other than the Declarant shall be called by the initial Board of the Association and shall be held within six (6) months after such conveyance, at which time Officers and Board Members shall be affirmed, and an initial budget approved. At such meetings held after Declarant's right to appoint and remove Board Members terminates as more particularly set forth in the Declaration, the Board Members shall be elected in accordance with the requirements of these Bylaws, the Declaration and the Act. Any contested election for membership on the Board shall be decided by secret ballot as provided for in Act. The Owners may also transact such other business of the Association as may properly come before them at these meetings.

4.3. Special Meetings of Members. Special meetings of the Members may be called (i) by the President of the Board; (ii) upon resolution of the Board adopted at a Board meeting; or (iii) upon receipt of a written request from at least one-third (1/3) of the Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business except as stated in the notice shall be transacted at a special meeting.

4.4. Meeting to Review Annual Budget. At the annual meeting of the Association or at special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to reject the budget of the projected revenues, expenditures

and reserves for the next fiscal year as approved by the Board. A summary of the proposed budget that has been approved by the Board shall be mailed to the Owners within thirty (30) days after Board approval along with a notice of a meeting of the Association to be held not less than ten (10) nor more than fifty (50) days after mailing the summary to the Owners (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of the CRNCA). Unless eighty percent (80%) of all Owners reject the approved budget at the meeting, or by ballot, the budget shall be deemed ratified; provided however, for any budget item allocated to only to one or more, but less than all of the Owners, the budget item may be rejected only by eighty percent (80%) of the votes allocated to the impacted Owners. There are no quorum requirements for any meeting on the annual budget. If a proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Board.

- 4.5. **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 fifty (50) days prior to the meeting of Members or the event requiring a determination of Members.
- 4.6. **Notice of Members' Meetings.** Written notice stating the place, day and hour or any meeting shall be delivered not less than ten (10) nor more than fifty (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 the 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 Subdivision, 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 such posting if such Member has not furnished an address for mailing of notice to the Association. Notice also shall be posted electronically if the Association's website if one is established. If an electronic means of notice is available and an Owner requests that the Association send notice by electronic mail, the Association shall provide notice of all regular and special meetings of Owners by electronic mail to those Owners who request such notice after furnishing the Association with their electronic mail addresses. An Owner may direct the Association, in writing, to provide notices only in electronic form.
- 4.7. **Registration of Electronic Mailing Address.** The Owner of a Unit may register with the Association the electronic mail address for the Unit Owner. If the Association

has available electronic means to provide notice of meetings, periodic budgets or other information related to the Subdivision, and an Owner requests that the Association send Subdivision information and notices by electronic mail, the Association shall provide such notices and information electronically to all Unit Owners making a request for delivery of the information by electronic mail. Any notice or Subdivision information provided by electronic mail shall be deemed delivered upon the Association or its Manager sending the information electronically to the electronic address provided by the Unit Owner, without return of the electronic message as undeliverable or receipt by the Association of notice of delivery failure.

4.8. **Proxies.** A Member entitled to vote may vote in person or by proxy executed 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) sixty {60} days after the date of its execution unless otherwise provided in the proxy; and, in any event, for no more than eleven (11) months after the date of its execution; unless
- b) the signatures of the Members providing the proxy are notarized;
- c) the proxy contains the signature of all Members entitled to vote such interest; and
- d) 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 furnished by the Association shall afford an opportunity thereon for Members to specify a choice between approval and disapproval of each matter or group of related 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.

4.9. **Quorum at Members' Meetings.** Except as may be otherwise provided in the Declaration, the Articles of Incorporation or these Bylaws, and except as hereinafter provided with respect to the calling of another meeting, the presence, in person or by proxy, of Members entitled to cast at least one-third (33.33%) 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 requirements hereinabove specified.

- 4.10. **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 not to exceed thirty (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.
- 4.11. **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.
- 4.12. **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.
- 4.13. **Conduct of Meetings.** All meetings of the Association, the Board or any committee established in furtherance of the governance of the Association shall be open to attendance by all Owners or their designated representatives, except the Board may hold an executive session for those matters specifically identified in the Act as confidential. Notice of the meeting shall invite comment from any Unit Owners or their designated representatives, orally or in writing. The Board shall conduct the meeting to provide Owners with a reasonable opportunity to speak at appropriate times during the proceedings, subject to the reasonable restrictions on speaking time and meeting conduct imposed by the Board.
- 4.14. **Expenses of Meetings.** The Association shall bear the expenses of all annual meetings of Members and of special meetings of Members.
- 4.15. **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.

4.16. **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 consistent with the provisions of the CRNCA.

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 and the CRNCA.

5.2. **Special Powers and Duties of Board.** Without limiting the foregoing statement or general powers and duties of the Board of Directors or the powers and duties of the Board of Directors as set 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 assessments upon the Members of the Association as 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, if any, 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) *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.
- e) *Borrowing.* The power, with the approval of Members representing at least' sixty-seven percent (67%) of the voting power of the Association, 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.

- f) *Enforcement.* The power to enforce the provisions of the Declaration, the Rules and Regulations, these Bylaws or other agreements of the Association.
- g) *Delegation of Powers.* The power to delegate its powers according to law.
- h) *Annexations.* The power to annex additional real property to the Subdivision as more fully provided in the Declaration.
- i) *Governance Policies.* The power to adopt and enforce responsible governance policies for the administration of the Association consistent with § 38-33.3-209.5, C.R.S.

5.3. Qualifications of Directors. A Director may be any natural person and must be an Owner of a Lot within the Subdivision. 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 initial number of Directors of the Association shall be three (3). The number of Directors may never be less than two (2) 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 appointees of 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-five percent (25%) of the Lots within the Subdivision or whenever Declarant earlier determines, in its sole and absolute discretion, the Association shall call a special meeting at which the Members other than Declarant shall elect twenty-five percent of the three (3) Directors. The remaining two (2) Directors shall be appointed by Declarant. The Director elected by the Members other than Declarant shall not be subject to removal by Declarant and, unless said Director sooner resigns or is removed, shall be elected for a term of two (2) years or until the happening of the event described in Section 5.5 (d) below, whichever is shorter. If such Director's term expires or such Director resigns or is removed prior to the happening of the event described in Section 5.5(d) 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 percent (50%) of the Lots within the Subdivision or whenever Declarant earlier determines, the Association shall call a special meeting at which Members other than Declarant shall elect one-third of the Directors. Directors elected by the Members other than Declarant shall not be subject to removal by Declarant unless said Director(s) sooner resign or are removed. Such Director(s) shall be elected for a term of two (2) years or until the happening of the event described in Section 5.5(d) below, whichever is shorter. If such Director's term expires or such Director resigns or is removed prior to the happening of the event described in Section 5.5(d) below, a successor shall be elected by the Members other than Declarant for a like term.
- d) Within sixty (60) days after the time Members, other than Declarant, own seventy-five percent (75%) of the Lots within the Subdivision, or whenever Declarant earlier determines, in its sole and absolute discretion, the Declarant Control Period shall terminate. 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 Directors. The Directors elected by the Members, including Declarant, shall serve until the first annual meeting following the termination of the Declarant's Control Period. If such annual meeting occurs within sixty (60) days after termination of the Declarant's Control Period, this subparagraph shall not apply and Directors shall be elected in accordance with paragraph 5.5(f) below.
- e) Within sixty (60) days after the termination of the Declarant Control Period, 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;
 - 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;
 - iii. the Association funds and control thereof;
 - iv. all insurance policies then in force, in which the Owners, the Association, or its Directors and Officers are named as insured persons;
 - v. a roster of Owners and Mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records subject to all privacy requirements contained in the Act; and
 - vi. employment contracts in which the Association is a contracting party;

vii. 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.

f) At the first annual meeting of the membership after the termination of the Declarant's Control Period, the Directors shall be elected as follows:

i. At least one (1) Director shall be elected for a term of two (2) years, and two (2) Directors shall be elected for a term of one (1) year.

ii. at the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

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. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. 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 (3) 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 Revised 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.

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. The provisions of these Bylaws with respect to notice of meeting, waiver of notice, quorums, adjournments, vote required and action by consent applicable to meetings of Directors shall be applicable to meetings of committees of the Board of Directors.

5.12. **Maintenance of Fidelity Insurance.** In the event that the Board of Directors delegates its powers with respect to collection, deposit, transfer, or disbursement of Association funds to other persons or to a managing agent, as authorized by these Bylaws and the Colorado Common Interest Ownership Act, then in connection with such delegation of powers, the Board of Directors shall require:

- a) that the other persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than the minimum required by the Act or such higher amount as the Board of Directors or Executive Committee may require;
- b) that the other persons or managing agent maintain all funds in accounts of the Association separate from the funds and accounts of other associations managed by the other persons or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the Association; and
- c) that an annual accounting for Association funds and a financial statement be prepared and presented to the Association by the managing agent, a public accountant, or a certified public accountant.

5.13. **Conflict of Interest Policy.** The Board shall adopt a policy to address, among other matters as the Board deems appropriate, any contract, decision, or other action taken by or on behalf of the Board that would financially benefit any Board Member, or any person who is a parent, grandparent, spouse, child, or sibling of a Board Member, or a parent or spouse of any of those persons (the "Conflict of Interest Policy"). The policy shall provide procedures for disclosure of any Conflict of Interest and whether recusal from decision making is required. Board Members shall be provided a copy of the Conflict of Interest Policy before taking office, and shall agree to abide by the Conflict of Interest Policy and its requirements concerning conflicts of interest. The Board shall retain the Conflict of Interest Policy with the records of the Association.

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 Subdivision, 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 ten (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 annual meeting of such Members.
- 6.3. Other Regular Meetings of Directors.** The Board of Directors shall hold regular meetings annually 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 (2) members of the Board of Directors.
- 6.5. Notice of Directors' Meetings.** In the 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 (3) nor more than fifty (50) days before the date of the meeting, by mail, telegraph, telephone, electronically 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 5:00p.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 by telephone, such notice shall be deemed to be delivered when given by telephone to the Director. If delivered electronically such notice shall be deemed to be delivered when delivered to the email address provided by the Director without a receipt of any notice the message is undeliverable or of its return. If given personally such notice shall be deemed to be delivered upon delivery of a copy of a written notice to the Director. 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. Proxies.** A Director shall not be entitled to vote by proxy at any meeting of Directors.

- 6.7. **Quorum of Directors.** A majority of the number of Directors fixed in these Bylaws shall constitute a quorum for the transaction of business.
- 6.8. **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 thirty (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 which may have been transacted at the meeting as originally called.
- 6.9. **Vote Required at Directors' Meeting.** At any meeting of Directors, if a quorum is present, sixty-seven percent (67%) of the votes present in person and entitled to be cast in a matter shall be necessary for the adoption of the matter.
- 6.10. **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.
- 6.11. **Officers at Meetings.** The President shall act as chairman and the Board of Directors shall elect a Director to act as secretary at all meetings of Directors.
- 6.12. **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.
- 6.13. **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 a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

7. OFFICERS.

- 7.1. Officers, Employees and agents.** The officers of the Association shall consist of a President, a Secretary, and a Treasurer and such other officers, including one or more Vice- Presidents, 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 of 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 removed earlier.
- 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, to 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; shall be the principal executive officer of the Association; shall, subject to the control of the Board of Directors, 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 such funds 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 or officer, and any former Director or officer 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) *Standards 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:
 - i. conducted himself or herself in good faith;
 - ii. reasonably believed (1) 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 (2), 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.
 - iv. in the case of any Director appointed by the Declarant if the Director acts consistently with the standards for Declarant appointees as set forth in the Act.
- 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 Section 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:

- a) 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
- b) 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 Sections 8.3(a) and 8.3(b) or whether or not the party met the applicable standards of conduct set forth in Section 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 Revised Nonprofit Corporation Code.

8.4. Prior Authorization Required. Any indemnification under Section 8.2 (unless ordered by a court or in accordance with Section 8.3 above) 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 Section 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 shall pay for or reimburse the Expenses, or a portion thereof, incurred by a party in advance of the final 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 Section 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 Section 8.6(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. 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 ninety (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 to 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. **Savings Clause; Limitation.** If this Article or any Section or provision hereof shall be invalidated by any court on any ground, or if the CRNCA 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.** These Bylaws may be amended by the affirmative vote of sixty-seven (67%) percent of the Board Members, provided, however, that no amendment shall conflict with or minimize the intended effect of the provisions of the Articles of Incorporation, or the Declaration, nor omit any of the particular requirements of the Act, or other applicable law. Any meeting to amend the Bylaws shall specify the nature and text of any proposed amendment or amendments, provided that these Bylaws shall at all times comply with the provisions of the Act and the CRNCA.

No amendment of these Bylaws of the Association shall be adopted which would: (i) materially impact or otherwise impair the validity, or in any way impact the priority of any Mortgage; (ii) change the provisions of the Bylaws with respect to First Mortgagees; or (iii) effect any of the provisions for the benefit of Mortgagees as set forth in Article 17 of the Declaration.

9.2. **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.

9.3. **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 (subject to existing privacy obligations), including Declarant, and copies of the Declaration, the Articles of Incorporation and these Bylaws and the Association's Responsible Governance Policies. The books and records of the Association, including the Articles of Incorporation, Bylaws as amended and minutes of meetings. Members and Directors may be inspected by any Member or its agent or attorney, and any First Mortgagee of a Member for any proper purpose. The right of inspection shall be subject to reasonable rules adopted by the

Board of Directors requiring advance notice of inspection, including the hours and days of the week during which inspection will be permitted and establishing reasonable fees for any copies to be made or furnished.

9.4. 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 ninety (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 current members, may be found.

9.5. 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. The Association may charge a reasonable fee to generate the report.

9.6. Corporate Filings. 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.

9.7. 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.

9.8. 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."

9.9. 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 paragraph, 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.

- 9.10. **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.
- 9.11. **Limited Liability.** As provided in the Articles of incorporation and Declaration, the Association, the Board of Directors, 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.
- 9.12. **Special Rights of First Mortgagees.** Any First Mortgagee of a Mortgage encumbering any Lot in the Subdivision, 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 sixty (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 ninety (90) days following the end of any fiscal year of the Association;
 - d. receive written notice of abandonment or termination of the Declaration;
 - e. receive thirty (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
 - f. receive written notice as soon as the Association receives notice or otherwise learns of any material damage to the Association Common Elements.
- 9.13. **Minutes and Presumptions Thereunder.** Minutes or any similar record or the meetings of Members, or of 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.

- 9.14. **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 of Directors.
- 9.15. **Compliance.** These Bylaws are intended to comply with the requirements of the Act and the CRNCA. If any provisions of these Bylaws conflict with the provisions of any of such Acts, as the Acts may be amended from time to time, it is hereby agreed that the provisions of the appropriate Act will apply.
- 9.16. **Conflicts.** These Bylaws shall govern the affairs of the Association, but to the extent there is a conflict between the terms or provisions of these Bylaws and the Declaration, the terms and provisions of the Declaration shall prevail.
- 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.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that

I am the duly elected and acting Secretary of The Rapids on the Colorado Homeowners Association, a Colorado non-profit corporation ("Association"); and

The foregoing Amended and Restated Bylaws, comprising 28 pages including this page, constitute the Bylaws of the Association duly adopted by unanimous consent of the Board of Directors of the Association and shall replace and supercede in their entirety the Association Bylaws dated May 27, 1997.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this 27th day of September, 2015.



Mary J. Hilton

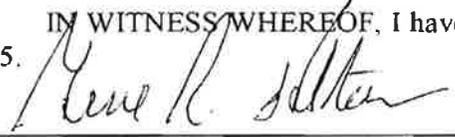
MEMBERSHIP RATIFICATION

I, the undersigned, do hereby certify that

I am the sole Member of The Rapids on the Colorado Homeowners Association, a Colorado non-profit corporation; and

Pursuant to Section 9.1, Amendment, I approve these Amended and Restated Bylaws and acknowledge and ratify that they shall replace and supercede in their entirety the Association's Bylaws dated May 27, 1997.

IN WITNESS WHEREOF, I have executed this Ratification this 27th day of September, 2015.



Gene R. Hilton