

**AMENDED AND RESTATED
BYLAWS
OF
UNIVERSITY PARK HOMEOWNER'S ASSOCIATION**

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RECITALS

University Park Homeowner's Association, a Colorado nonprofit corporation (“Association”), certifies that:

- (1) The Association and its Members desire to amend and restate the Bylaws adopted December 31, 1997 as set forth below.
- (2) The provisions set forth in these Amended and Restated Bylaws supersede and replace the existing Bylaws and all amendments.

The Bylaws of the Association are hereby amended by striking in their entirety Articles I through XV, inclusive, and by substituting the following:

ARTICLE 1 INTRODUCTION, PURPOSES AND DEFINITIONS

Section 1.1 Introduction.

These Amended and Restated Bylaws are adopted for the regulation, management, and governance of the affairs of the Association. The Association is organized as a Colorado nonprofit corporation under Colorado law to act as the Association under the Declaration of Covenants, Conditions, Restrictions and Easements for University Park, as may be amended (the “Declaration”).

Section 1.2 Purposes.

The purposes for which the Association is formed are:

- (a) to protect the value and desirability of the University Park community (the “Community”) and the Lots;
- (b) to further the interests of the residents of the Community and Members of the Association;

- (c) to be the owners association provided for in the Declaration;
- (d) to operate and govern the Community;
- (e) to provide for the administration, maintenance, preservation, and architectural review of the Lots and Association Properties within the Community; and
- (f) to include other purposes as stated in the Declaration and Articles of Incorporation.

[Note: This provision is similar to Articles I and XI of your current Bylaws.]

Section 1.3 Definitions.

The definitions set forth in this Section, in the Declaration, and/or by Colorado law shall apply to all capitalized terms contained in these Bylaws, unless otherwise noted, or as set forth below:

- (a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq., as it may be amended.
- (b) "Community" or "University Park Community" or "Planned Community" shall mean the planned community known as "University Park," and the real property subject to the Declaration and as further defined by the recorded Plats and the legal descriptions contained in the Declaration, and the Members of the Association.
- (c) "Nonprofit Act" shall mean the Colorado Revised Nonprofit Corporations Act, C.R.S. §7-121-101, *et seq.*, as may be amended.
- (d) "Owner" and "Member" refer to the same.

[Note: This definitions section has been added to refer to the Declaration and Colorado law for defined terms.]

ARTICLE 2 MEMBERSHIP AND VOTING

Section 2.1 Membership and Voting.

(a) Every Person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Votes shall be allocated pursuant to the Declaration. Fractional and cumulative voting are prohibited.

(b) Proof of Ownership. Any person on becoming an Owner of a Lot and a Member of the Association shall furnish to the Secretary of the Association a copy of the recorded instrument vesting that person with an interest or ownership in the Lot, which copy shall remain in the files of the Association.

(c) Registration of Mailing Address. The Owners or several Owners of an individual Lot shall have the same registered mailing address to be used by the Association for mailings to Members and/or Owners of statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person or persons, firm, corporation, partnership, limited liability company, association or other legal entity or any combination thereof to be used by the Association. Such registered address of a Member or Owner shall be furnished to the Secretary of the Association 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 the owners of the Lot or by such persons as are authorized by law to represent the interest of the Owners thereof. Unless otherwise notified by the Owner, the registered mailing address shall be the address of the Lot of such Owner.

[Note: This provision simplifies and combines Article II, Sections 1 and 2 of your current Bylaws.]

Section 2.2 Suspension of Voting Rights and Use Rights.

During any period in which an Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Association, default being more than 30 days past due, the voting rights and right to use of the General Common Elements of the Owner shall be deemed suspended by the Board of Directors, without notice or hearing, until the Assessment has been paid. Voting rights and use rights of an Owner may also be suspended for other violations of published rules and regulations of the Association for a period not to exceed 60 days or during any period of

violation, whichever is greater.

[Note: This provision revises Article IV, Section 2(f) of your current Bylaws to allow suspension for up to 60 days or for as long as the violation continues, whichever is greater, for covenant violations, instead of limiting the same to only 60 days.]

Section 2.3 Member Voting.

(a) At all meetings of Members, each Member eligible to vote may vote in person or by proxy.

(b) If only one of several Owners of a Lot is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Lot.

(c) If more than one of the Owners is present, the vote allocated to the Lot may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the Person presiding over the meeting by another Owner of the Lot. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted.

(d) The vote of a corporation, partnership, limited liability company, or other legal entity may be cast by any officer, director, trustee, partner, manager, or member of such corporation, partnership, limited liability company, or other legal entity in the absence of express notice of the designation of a specific Person to the Board of Directors.

(e) The chair of the meeting may require reasonable evidence that a Person voting on behalf of a corporation, partnership, or business trust Owner is qualified to vote.

(f) Votes allocated to Lots owned by the Association may not be cast by the Board.

[Note: This provision expands Article IX, Section 3 of your current Bylaws to clarify how votes may be registered when there are multiple Owners or corporate Owners. See Colorado Common Interest Ownership Act (CCIOA) C.R.S. Section 38-33.3-310]

Section 2.4 Transfer of Membership.

Transfers of membership shall be made on the books of the Association only upon the presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the membership is appurtenant.

[Note: This provision has been added.]

ARTICLE 3 MEETINGS OF MEMBERS

Section 3.1 Annual Meeting.

One annual meeting of the Members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Board. The Directors shall be elected by the Members at the annual meeting, in accordance with the provisions of these Bylaws. The Members may transact other business as may properly come before them at the annual meeting as set forth on the agenda for the meeting included with the meeting notice. No matters shall be voted on at this meeting that were not included in the meeting notice. Failure to hold an annual meeting shall not be considered a forfeiture or dissolution of the Association.

[Note: This provision revises and updates Article III, Section 3 of your current Bylaws to allow the Board more flexibility in conducting annual meetings.]

Section 3.2 Informational Meeting.

One informational meeting shall be scheduled during each of the Association's fiscal years, at such time of the year and date as determined by the Board. This meeting shall be a forum for Members to raise issues and concerns for discussion with the Board and other Members. Three months prior to the scheduled meeting, the Board shall notify the Members of the meeting and request items for the agenda. Agenda items shall be presented to the Board at least sixty (60) days prior to the meeting. Items for discussion shall be general matters affecting the community and not individual matters. The Board has sole discretion to decide if a proposed item is better discussed in a different forum such as a Board meeting or a standing committee as opposed to a Member meeting. Items related to confidential matters will not be included on the agenda. No matters shall be voted on at this meeting that were not included in the meeting notice and accompanying agenda. The Board shall provide notice to the Members of all agenda items to be discussed. The Association President shall preside over the meeting. The Member or Members proposing an item for the agenda shall be present at the meeting to present the matter for discussion or the Board may withdraw the item from the agenda. If no items are presented to the Board, the Board may cancel the meeting with notice to the Members. The annual budget and assessment

shall include the expense of the meeting.

Section 3.3 Budget Meetings.

Meetings to consider proposed budgets shall be called in accordance with the Act and the Declaration.

[Note: This provision has been added to set forth how budget meetings will be conducted pursuant to CCIOA.]

Section 3.4 Special Meetings.

Special meetings of the Association may be called by the President, by a majority of the Members of the Board of Directors, or by the Secretary, upon receipt of a petition signed by Owners holding at least 15% of the votes in the Association. The form of notice as specified in Section 3.5 below, date, time, and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the Secretary within 30 days after the date the written demand or demands are delivered to the Secretary, the Person(s) signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the President of the Board, or in their absence, a Person chosen by a majority of the Board. In the event no Board members are in attendance, a chairperson for the meeting shall be elected by a majority of the Members present at the meeting, and that chairperson shall conduct the meeting.

[Note: This provision is substantially similar to Article III, Section 4 of your current Bylaws, but provides guidance regarding calling the special meeting requested by Owners. CCIOA 308 and Colorado Revised Nonprofit Corporations Act (CRNCA), C.R.S. Sec. 7-127-102.]

Section 3.5 Notice of Meetings.

Notice of each meeting of the Members shall be physically posted in a conspicuous place if feasible and practicable at least 24 hours prior to any meeting of the Members. Written notice of each meeting of Members shall be given by, or at the direction of, the Secretary or Person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, or by personal delivery, at least 10 days but not more than 50 days before the meeting to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by a Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated in the notice.

In addition to mailing, but not in lieu of, notice may also be sent by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, e-mail delivery. If the Association has the ability to give electronic notice, the Association shall e-mail notice of the Members' meeting to any Member who requests, and who provides their e-mail address to the Association in addition to the above specified delivery of notice. Any such e-mail notice shall be given at least 24 hours prior to the meeting.

[Note: This provision revises Article III, Section 5 of your current Bylaws to be consistent with Colorado law, CCIOA 308(1) which requires a 10 day minimum and a 50 day maximum notice for Member meetings. This provision is also similar to Article IX, Sections 1 and 2 of your current Bylaws.]

Section 3.6 Place of Meetings.

Meetings of the Members shall be held in the Community or any other location in Colorado Springs.

[Note: This provision is similar to Article III, Section 2 of your current Bylaws.]

Section 3.7 Quorum of Members.

The presence of Members holding at least 10% of the votes entitled to be cast in the Association at any meeting, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Association Documents.

[Note: This provision is similar to Article II, Section 3 of your current Bylaws.]

Section 3.8 Proxies for Members Meetings.

(a) The vote allocated to a Lot may be cast under a proxy duly executed by an Owner. A proxy shall be valid for one Lot only.

(b) All proxies shall be in writing and provided to the Secretary or designee of the Association.

(c) If a Lot is owned by more than one Person, each Owner of the Lot may vote or register protest to the casting of the vote by the other Owners of the Lot through a duly executed proxy. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or

votes, such vote or votes shall not be counted.

(d) An Owner may revoke a proxy given under this section by written notice of revocation to the Person presiding over a meeting of the Association or by attending the meeting and voting in person, after giving actual notice to the Person presiding over the meeting of the Owner's intent to do so.

(e) A proxy is void if it is not dated.

(f) Proxy forms provided by the Association shall state they are valid for a specific meeting and any adjournments thereof, or upon sale of the Lot for which the proxy was issued, whichever is earlier. Members may amend the proxy form to provide for another termination date. In no event shall a proxy be valid more than eleven months after its date.

(g) Proxies obtained through fraud or misrepresentation are invalid as determined in the sole discretion of the Secretary of the Association.

[Note: This provision is an expanded version of the proxies provision set forth in Article III, Section 8 of your current Bylaws. CCIOA 310(2)(a) and (b); CRNCA 127-203]

Section 3.9 Order of Business.

The Board may establish the order of business for all meetings of the Board or Members. Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

[Note: This provision is a generalized version of Article III, Section 7 of your current Bylaws. A more generalized provision is preferred to allow for flexibility. However, you may retain the agenda set forth in your current Bylaws if you desire.]

Section 3.10 Voting Procedures/Secret Balloting.

(a) Secret ballots must be used when required by law.

(b) All other voting may be by voice, by show of hands, by consent, by mail, by electronic means, by proxy, by written ballot, or as otherwise determined by the Board of Directors prior to the meeting or by a majority of the Members present at a meeting.

[Note: This provision has been added pursuant to Colorado law. CCIOA 310(1)(b)(I) (A)]

Section 3.11 Voting by Mail Ballot.

(a) In any instance where a vote of the Members is required or permitted to be taken at a meeting of the Members, such vote may be taken by written ballot in lieu of a meeting, pursuant to this Section. In case of a vote by written ballot in lieu of a meeting, the Secretary shall mail or deliver written notice and a ballot to all Members. The notice shall include: (i) a statement of the proposed action, (ii) a statement that Members are entitled to vote for or against such proposal, (iii) a date and time by which ballots must be received by the Association to be counted, the date being at least 10 days after the date such notice shall have been given, and (iv) the number of votes which must be received to meet the quorum requirement and the percentage of votes received needed to carry the vote. The notice shall also be accompanied by written information sufficient to permit each Person casting such ballot to reach an informed decision on the matter.

(b) The Association may conduct elections of Directors by mail, in its sole discretion, and pursuant to procedures adopted by it; *provided however*, that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent.

(c) A written mail ballot, once received by the Association, may not be revoked.

[Note: This provision replaces Article XV, Section 2 of your current Bylaws to give the Association the flexibility to conduct Director elections and to conduct other business by mail, as one method to encourage Member participation. Voting by mail is permitted under the Colorado Revised Nonprofit Corporation Act, 7-127-109. This process is slightly different than voting by proxies in that no meeting need actually be held if a vote by mail is used.]

Section 3.12 Telephone or Electronic Communication in Lieu of Attendance.

Members, at the discretion of the Board, may attend meetings by using an electronic or telephonic communication method whereby the Member may be heard by the other Members and may hear the deliberations of the other Members on any matter properly brought at the meeting. The Member's vote shall be counted and the presence noted as if that Member were present in person.

[Note: This provision has been added to allow Members to participate telephonically, as well as in person, pursuant to Colorado law. CRNCA 7-127-108]

Section 3.13 Voting in Elections of Directors/Other Voting.

In an election of Directors, candidates receiving the largest number of votes shall be elected. On all other items, the vote of Members holding a majority of the votes cast shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Association Documents, as amended, or by law. The number of votes cast for each candidate or the number of votes cast for and against motions shall be reported verbally at the meeting and in the minutes.

[Note: This provision is similar to Article II, Section 3 of your current Bylaws.]

Section 3.14 Acceptance or Rejection of Individual Votes.

The Association has the right to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation when it has a reasonable, good faith basis to doubt the validity of the signature or the signatory's authority to sign for the Owner and shall promptly inform the signatory of such rejection. The Association and its Officer or agent who accepts or rejects any of the above in good faith is not liable for any damages that may result from the acceptance or rejection. Unless a court decides otherwise, any action taken on the acceptance or rejection of any of the above will be deemed valid.

[Note: This provision has been added pursuant to Colorado law. CCIOA 310(2)(c-e)]

Section 3.15 Counting of Ballots.

All ballots shall be counted by a neutral third party and/or a committee of volunteers who are Owners and are not Board members and not candidates in a contested election, selected or appointed at an open meeting in a fair manner by the chair of the Board or Person presiding at such meeting or as otherwise required by law and as may be further defined by policy or procedures of the Association.

[Note: This provision has been added pursuant to Colorado law. CCIOA 310(1)(b)(I)(C)]

Section 3.16 Adjourned Meetings.

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 to a time not less than forty-eight (48) hours from the time the original meeting was called.

ARTICLE 4 BOARD

Section 4.1 Number.

The affairs of the Association shall be governed by a Board of Directors which shall consist of seven (7) members, elected or appointed as provided below. In the case where through removal or resignation, the total number of Board members is less than seven, the Board will be considered properly constituted until such vacancies are filled.

[Note: This provision is similar to Article IV, Section 1 of your current Bylaws.]

Section 4.2 Qualification.

- (a) Directors shall be Owners.
- (b) Only one Owner per Lot, eligible to vote, current in the payment of Assessments, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board.
- (c) If any Lot is owned by a partnership, trust, corporation, limited liability company, or other legal entity, any officer, partner, director, manager, member, trustee, or employee of that entity shall be eligible to serve as a Director.
- (d) Any Owner who is more than 60 days delinquent in payment of any Assessment and is not in a qualified payment plan shall not be qualified to serve on the Board.
- (e) Any Director who has unexcused absences from three consecutive Board meetings shall not be qualified to serve on the Board. An absence will be excused if the absent Board member notifies the Board president of the planned absence and the reason for the absence at least three days before the meeting, and a majority of the remaining Board members approve the absence as being for a valid purpose.
- (f) Any Owner who is in violation of any provision of the Association Documents for more than 60 days, after notice and the opportunity for a hearing, shall not be qualified to serve on the Board.
- (g) Any Owner who initiates or maintains an adversarial judicial proceeding of any type or initiation of arbitration against the Association shall not be qualified to serve on the Board for the duration of the proceeding.

(h) Once elected or appointed, each Director is encouraged to and shall, to the extent required by law, attend at least one educational program per year related to the management, operation or law of community associations. The Director shall be entitled to reimbursement of any actual or necessary expenses incurred in attending such educational program(s), as long as approved, in advance, by the Board of Directors. Any such expenses shall be treated as a Common Expense.

(i) If, by the affirmative majority vote of the remaining members of the Board, a Director is deemed not qualified to serve on the Board on the basis of 4.2(a) through (g), the Director's position shall be deemed vacant by resignation.

[Note: This provision expands the qualifications for Board members set forth in Article IV, Section 1 of your current Bylaws. Please note that under CCIOA 303(3)(a), the Board of Directors cannot determine or amend Director qualifications without a Member vote.]

Section 4.3 Nominating Committee.

A nominating committee shall be appointed by the Board of Directors at least three months prior to each annual meeting of the Members, to serve until the close of the annual meeting. The nominating committee shall consist of a chairperson, who shall be a member of the Board of Directors, and two or more Members of the Association.

No member of the nominating committee shall be allowed to become a candidate for election to the Board of Directors during any fiscal year they are a committee member. The duties of the nominating committee are:

- (a) To receive all applications for the Board of Directors; and
- (b) To approve all applications of qualified Members as specified in Section 4.2;
- (c) If necessary to have a total number of applicants at least as great as the number of vacancies that are to be filled, to recruit applicants; and
- (d) To conduct a candidate forum for Members to meet the candidates prior to any contested election.

[Note: This provision is similar to Article IV, Section 4 of your current Bylaws.]

Section 4.4 Term of Office for Directors.

The term of office for Directors shall be three years. The terms of the Directors shall be staggered with two Directors being elected one year, two Directors elected the next year and three Directors elected the third year.

[Note: This provision is similar to Article IV, Section 4 of your current Bylaws.]

Section 4.5 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 the resignation. Acceptance of a resignation shall not be necessary to make the resignation effective.

[Note: This provision has been added.]

Section 4.6 Removal of Directors.

(a) One or more Directors may be removed at a Special Meeting of Members called pursuant to these Bylaws, with or without cause, by a vote of at least 67% of the total votes cast at a meeting at which a quorum is present. Notice of a Special Meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the Directors sought to be removed, as provided in these Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.

(b) In the event of removal of one or more Directors, a successor shall be elected pursuant to these bylaws by the Members at the meeting to serve for the unexpired term of their predecessor(s).

[Note: This provision revises Article IV, Section 6 of your current Bylaws to increase the Owner approval required to remove a Director from a majority to 67%. CCIOA 303(8)]

Section 4.7 Vacancies.

Vacancies on the Board caused by any reason (other than removal) may be filled by appointment by a majority vote of the remaining Board by secret ballot at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum, following notification of the vacancy to the Members and a request for

applications. Each Person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

[Note: This provision is similar to Article IV, Section 5 of your current Bylaws. CRNCA 128-105(4).]

Section 4.8 Compensation.

No Director or Officer shall receive compensation for any service the Director or Officer may render as a Director or Officer to the Association. However, any Director or Officer may be reimbursed for actual expenses incurred in the performance of Association duties, if allowed by state law.

[Note: This provision is similar to Article IV, Section 4 and Article XI of your current Bylaws.]

ARTICLE 5 MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings.

Regular meetings of the Board of Directors shall be held at such times, place, and hour as may be fixed by the Board, provided that at least one such meeting shall be held during each calendar year. The Board may set a schedule of regular meetings by resolution, and no further notice is necessary to constitute such scheduled regular meetings.

[Note: This provision is similar to Article IV, Section 8 of your current Bylaws.]

Section 5.2 Organizational Meetings.

The first meeting of a newly elected Board of Directors following the annual meeting of the Members shall be held within 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 Board shall be present.

[Note: This provision is similar to Article IV, Section 7 of your current Bylaws.]

Section 5.3 Special Meetings.

Special meetings of the Board of Directors shall be held when called by the President of the Board, or by any two Directors, after not less than two days' notice to each Director.

[Note: This provision revises Article IV, Section 9 of your current Bylaws to decrease notice from three to two days pursuant to Colorado law. CRNCA 128-203(2)]

Section 5.4 Notice of Board Meetings.

(a) Notice of Board Meetings to Board Members. Except as provided in these Bylaws above or below, written notice of each meeting of the Board shall be given by, or at the direction of, the President or Secretary, by mailing a copy of the notice, postage prepaid, at least two days before the meeting, or by any other means permitted by the Nonprofit Act, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the Association, or supplied by a Board member to the Association for the purpose of notice. If a notice for a special meeting demanded pursuant to these Bylaws is not given by the Board within 30 days after the date the written demand or demands are delivered to the Board, the Directors signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the above terms of these Bylaws. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

(b) Notice of Board Meetings to Members. Notice of regularly scheduled board meetings and special meetings shall be posted on the Association's website in accordance with the Act and the Nonprofit Act.

[Note: This provision revises Article IV, Section 8 of your current Bylaws to decrease notice from five to two days pursuant to Colorado law.]

Section 5.5 Location of Meetings and Open Meetings.

(a) All meetings of the Board of Directors, other than executive sessions, shall be open to attendance by Members, as provided by applicable Colorado law.

(b) All meetings of the Board of Directors shall be held in the Community or in Colorado Springs unless all Directors consent in writing to another location.

(c) All meetings of the Board of Directors may be conducted in person, via conference call, via electronic means, or via any other method permitted by applicable Colorado law.

(d) Rules and Regulations and amendments of the Articles of

Incorporation and Bylaws may not be adopted in executive sessions of the Board.

(e) For any executive session of the Board, minutes kept for that part of the meeting should only indicate that an executive session was held and the general subject of the executive session.

[Note: This provision has been added pursuant to Colorado law. CRNCA 128-203]

Section 5.6 Waiver of Notice.

Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at the meeting.

[Note: This provision is similar to Article IV, Section 10 of your current Bylaws.]

Section 5.7 Quorum.

At all meetings of the Board a majority of the Directors currently in office shall constitute a quorum for the transaction of business, unless there are fewer than three Directors, in which case all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are fewer than three Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board.

[Note: This provision is similar to Article IV, Section 11 of your current Bylaws.]

Section 5.8 Proxies for Board Meetings.

For the purposes of casting a vote for or against a particular issue, a Director may execute, in writing, a proxy to be held by another Director. The proxy shall specify a yes or no vote on each particular issue for which the proxy was executed.

[Note: This provision has been added to allow for Director voting by proxy pursuant to the Colorado Revised Nonprofit Corporation Act. CRNCA 128-205(4)]

Section 5.9 Consent to Corporate Action.

The Directors shall have the right to take any action, except the adopting of a rule or regulation, in the absence of a meeting, which they could otherwise have taken at a

meeting, by:

(a) Obtaining the unanimous verbal vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at that time; or

(b) Providing written notice to each Director of a proposed action to be taken. Such notice shall include the date and time by which the Directors must respond to the proposed action and shall state that failure to respond by the time stated in the notice will have the same effect as abstaining in writing to a proposed action and failing to demand in writing that action not be taken without a meeting. Upon receiving written notice of a proposed action, each Director, by the date and time provided for in such notice, may: (i) vote in writing for such action; (ii) vote in writing against such action; (iii) abstain in writing from voting; (iv) fail to respond or vote; or (v) demand in writing that action not be taken without a meeting.

(1) In the event a sufficient number of affirmative votes for the proposed action are cast in writing and not revoked by the time stated in the notice that equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors then in office were present and voted, then the action is taken unless one or more Directors demands that the action not be taken without a meeting. In the event action is taken pursuant to this provision, the action shall be noted in the minutes of the next meeting of the Board and ratified at that time.

(2) Any Director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Section may revoke such vote, abstention, or demand in writing; provided such revocation is received by the Association by the time and date stated in the notice for such proposed action. A Director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the Association receives such demand from the Director in writing by the time stated in the notice for such proposed action and such demand has not been revoked.

(c) Any action taken under subsections (a) and (b)(1) above shall have the same effect as though taken at a meeting of the Directors and shall be effective at the end of the time stated in the notice for such proposed action.

[Note: This provision has been added to specify a procedure for taking action without a meeting pursuant to Colorado law. CRNCA 128-102]

Section 5.10 Telephone or Electronic Communication in Lieu of Attendance.

A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other Members and may hear the deliberations of the other Members on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person.

[Note: This provision has been added to allow the Board members to participate telephonically, as well as in person, pursuant to Colorado law. CRNCA 128-201]

Section 5.11 Owner Participation.

Owners must be allowed to speak before the Board votes on any issue under discussion. The Board shall allow a reasonable number of Persons to speak on each side of the issue, but the Board may place restrictions on the time allowed for each Owner to speak. Owners may also be allowed to speak at such other times as the Board, in its sole discretion, deems appropriate.

[Note: This provision has been added pursuant to Colorado law. CRNCA 128-203(3)(b)]

ARTICLE 6 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

[Note: The powers and duties set forth in Article IV, Section 2 of your current Bylaws have been revised, updated, and expanded here. Please note that the powers and duties contained in your current Bylaws cannot be amended without a Member vote pursuant to CCIOA 303(3.)]

Section 6.1 Powers and Duties.

The Board may act in all instances on behalf of the Association, except as provided in the Association Documents or the Act. The Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Community as a first-class residential community, including the following powers and duties:

- (a) Exercise any other powers conferred by the Association
- (b) To administer and enforce the covenants, conditions, restrictions,

easements, uses, limitations, obligations and all other provisions set forth in the Declaration, the Bylaws of the Association and supplements and amendments thereto; including the right to make repairs, additions, alterations, and improvements to the areas required to be maintained by the Association.

(c) Adopt and amend Association Documents, including responsible governance policies, procedures and rules and regulations as required by the Act, and including penalties for infraction thereof;

(d) Adopt and amend budgets (subject to any requirements of the Declaration and the Bylaws);

(e) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;

(f) Collect Assessments as provided by the Association Documents;

(g) Retain a managing agent, independent contractors, or employees as it deems necessary, and prescribe their duties;

(h) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Association Documents, and, in the Association's name, on behalf of the Association or two or more Owners, on matters affecting the Community;

(i) Provide Association disclosures required by, and pursuant to, the Act;

(j) Make contracts, administer financial accounts and incur liabilities in the name of the Association;

(k) Acquire, hold, encumber and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate, pursuant to the consent requirements set forth in the Association Documents;

(l) Borrow funds and secure loans with an interest in future Assessments in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefore, subject to the requirements set forth in the Declaration;

(m) Provide for the indemnification of the Association's Directors and any Person serving without compensation at the request of the Association, and maintain association professional liability insurance;

(n) Supervise all Persons acting on behalf of and/or at the discretion of

the Association;

(o) Procure and maintain liability and hazard insurance as set forth in the Association Documents;

(p) Cause all Persons having fiscal responsibilities for the assets of the Association to be insured and/or bonded, as it may deem appropriate;

(q) To provide education to Owners on an annual basis; and

(r) Subject to the provisions of the Declaration: to issue or to cause an appropriate Officer to issue, upon demand by a person, a certificate setting forth whether any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(s) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of the Association Documents or the Act.

Section 6.2 Managing Agent.

The Board shall employ a managing agent at a compensation established by the Board, to perform duties and services authorized by the Board. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a managing agent. Regardless of any delegation to a managing agent, the members of the Board shall not be relieved of responsibilities under the Association Documents or Colorado law.

[Note: This provision is similar to Article VI, Section 2 of your current Bylaws.]

Section 6.3 No Waiver.

The omission or failure of the Association or Owner to enforce the covenants, conditions, easements, uses, limitations, obligations, or other provisions of the Association Documents shall not constitute or be deemed a waiver, modification, or release thereof, and the Board or the managing agent shall have the right to enforce the same at any time.

[Note: This provision is similar to Article IV, Section 3 of your current Bylaws.]

ARTICLE 7 OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Offices.

The Officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary and Treasurer, who are not required to be members of the Board of Directors but shall be Owners, and such other Officers as the Board may from time to time create by resolution. Any two offices, except the offices of President and Secretary, may be held by the same Person.

[Note: This provision revises Article V, Sections 1 and 3 of your current Bylaws to require the Vice-President to also be a Board member, in addition to the President as is currently required in your Bylaws.]

Section 7.2 Election of Officers.

The Officers shall be elected by the Board for one year terms at the organizational meeting of the Board of Directors following each annual meeting of the Members.

[Note: This provision is similar to Article V, Section 2 of your current Bylaws.]

Section 7.3 Special Appointments.

The Board may elect other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

[Note: This provision has been added.]

Section 7.4 Resignation and Removal.

Any Officer may be removed from office with or without cause by a majority of the Board of Directors. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. A resignation shall take effect on the date of receipt of a notice or at any later time specified therein. Acceptance of a resignation shall not be necessary to make it effective.

[Note: This provision is similar to Article V, Section 3 of your current Bylaws.]

Section 7.5 Vacancies.

A vacancy in any office may be filled by appointment by the Board by majority vote of the Board. The Officer appointed to the vacancy shall serve for the remainder of the term of the Officer replaced.

[Note: This provision is similar to Article V, Section 3 of your current Bylaws.]

Section 7.6 Duties.

The duties of the Officers are as follows:

(a) President. The President shall have all of the general powers and duties which are incident to the office of President of a Colorado nonprofit corporation. Specifically, the President shall have the power to preside at all meetings of the Board of Directors and of the Members; appoint committees; see that orders and resolutions of the Board are carried out; sign contracts, leases and other written instruments; direct, supervise, coordinate and have general control over the day-to-day affairs of the Association.

(b) Vice-President. The Vice-President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other Director to act in the place of the President on an interim basis. The Vice-President shall also perform other duties imposed by the Board of Directors or by the President.

(c) Secretary. The Secretary shall record the votes and maintain the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; cause Association records to be kept and maintained; and perform such other duties incident to the office of Secretary or as required by the Board.

(d) Treasurer. The Treasurer shall be responsible for the receipt, deposit and disbursement of Association funds and securities and for maintenance of full and accurate financial records; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership, and deliver a copy of each to the Members. The Treasurer shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board of Directors. When

a managing agent has been delegated the responsibility of collecting and disbursing funds, the Treasurer shall review the accounts of the managing agent not less than quarterly.

[Note: This provision is similar to Article V, Sections 4 through 7 of your current Bylaws.]

Section 7.7 Delegation.

Any Officer duties may be delegated to the managing agent, committee, or another Board member; *provided, however*, the Officer shall not be relieved of any responsibility under this Section or under Colorado law.

[Note: This provision has been added to permit delegation of duties, but not responsibility, to the Association manager.]

Section 7.8 Limits on Delegation, Requirements for Association Funds and Financial Statements.

Pursuant to the Act, if the Association has 30 or more Lots, and the Association delegates powers of the Board or Officers relating to collection, deposit, transfer or disbursement of Association funds to other Persons or to a manager or managing agent, the Association requires the following:

- (a) That the other Persons or managing agent maintain fidelity insurance coverage or a bond in an amount not less than \$50,000.00 or such higher amount as the Executive Board may require;
- (b) The other Persons or managing agent maintain all funds and 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;
- (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.

[Note: This provision has been added pursuant to Colorado law. CCIOA 306(3)]

ARTICLE 8 COMMITTEES

Section 8.1 Designated Committees.

The Association may create committees and appoint such committee members as deemed appropriate in carrying out its purposes. Committee chair persons must meet the same qualifications to serve as Board members must meet to serve on the Board, as set forth in these Bylaws. Committees shall have authority to act only to the extent designated in the Association Documents or delegated by the Board. The Board shall also have the power to remove any and all committee members with or without cause and to terminate any such committee.

[Note: This section has been added.]

Section 8.2 Open Committee Meetings.

All committee meetings shall be open to attendance by Members, as provided by applicable law.

[Note: This section has been added. CCIOA 308(2)(a) and CRNCA 128-203(3)(a)(I)(A)]

ARTICLE 9 BOOKS AND RECORDS

[Note: This Article has been added pursuant to Colorado law CCIOA.]

Section 9.1 Association Records.

The Association records will be available for production to Owners in accordance with statutory requirements, which are further set forth in the Association's Inspection and Copying of Records Policy.

Section 9.2 Minutes and Presumptions Under the Minutes.

Minutes or any similar record of 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.

Section 9.3 Examination.

The Association records shall at all times, during normal business hours and after at least ten days written notice, or at the next scheduled Board meeting if within 30 days of written request, be subject to inspection and copying by any Member, at their expense, except documents determined by the Board to be withheld under the inspection of records policy of the Association in accordance with the Act. Any Owner's request to inspect and copy Association records must describe with reasonable particularity what records are requested. The Association may charge the actual costs for copying of the records, as clarified further in its Inspection and Copying of Records Policy.

ARTICLE 10 AMENDMENTS

Section 10.1 Bylaw Amendments.

(a) These Bylaws may only be amended by the affirmative vote of a majority of the total votes cast following:

(i) a proposal to amend the Bylaws approved by a majority of the Board of Directors and presented to the Members for a vote; or

(ii) a proposal to amend the Bylaws presented to the Board of Directors in a petition signed by Owners holding at least 15% of the votes in the Association. The petition shall include the proposed amendment to the Bylaws, a statement explaining the amendment, and reasons in support of the amendment. The Board of Directors, in its sole discretion, may seek legal counsel as to the amendment and may edit the wording of the amendment without changing the meaning. When presenting the amendment to the Members for a vote, the Board of Directors may include a statement of reasons for or against the amendment. The Board of Directors, in its sole discretion, shall determine the time of the vote on the amendment but not later than the next annual meeting of the Members at least sixty (60) days after the petition is presented to the Board of Directors.

(b) Notwithstanding anything to the contrary in these Bylaws, these Bylaws may be amended by the Board of Directors, without Member approval, to comply with any statutory changes or judicial requirements.

[Note: This provision revises Article VII of your current Bylaws to add an Owner approval requirement, pursuant to Colorado law. Please note that the Board cannot amend the quorum requirement without a Member vote unless the law provides otherwise. Further, the Board cannot amend the terms, qualifications or powers and duties of the Board without a Member vote unless the law provides otherwise.]

ARTICLE 11 INDEMNIFICATION

[Note: This section updates and replaces Article VI of your current Bylaws pursuant to Colorado law. CRNCA 129-101]

Section 11.1 Obligation to Indemnify.

(a) The Association shall indemnify any Person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative; by reason of the fact that the Person is or was a Director, Officer or committee member of the Association; provided the Person is or was serving at the request of the Association in such capacity; and provided that the Person:

(i) acted in good faith, and;

(ii) in a manner that the Person reasonably believed to be in the best interests of the Association, and;

(iii) with respect to any claimed criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

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

(b) Notwithstanding anything in subsection (a) above, unless a court of competent jurisdiction determines that, in view of all circumstances of the case, the Person is fairly and reasonably entitled to expenses, no indemnification shall be made:

(i) In connection with a proceeding by or in the right of the Association, where the Person has been adjudged to be liable to the Association; or

(ii) In connection with any other proceeding charging that the Person received an improper personal benefit, whether or not involving action in an official capacity, the Person has been adjudged liable on the basis the Person received an improper personal benefit.

(c) To the extent that the Person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the Person shall be indemnified against actual and reasonable expenses (including expert witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

Section 11.2 Determination Required.

(a) The Board of Directors shall determine whether the Person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of those members of the Board of Directors who were not parties to the action suit or proceeding.

(b) If a quorum cannot be obtained as contemplated above or if a quorum has been obtained and the Board so directs, a determination may be made, at the discretion of the Board, by:

(i) independent legal counsel selected by a majority of the full Board; or

(ii) by the voting Members, but voting Members who are also at the same time seeking indemnification may not vote on the determination.

Section 11.3 Payment in Advance of Final Disposition.

The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the Person requesting indemnification provides the Board of Directors with:

(a) A written affirmation of that Person's good faith belief that they have met the standard of conduct described above; and

(b) A written statement that the Person shall repay the advance if it is ultimately determined that they did not meet the standard of conduct described above.

Section 11.4 No Limitation of Rights.

The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. §38-33.3- 101, *et seq.*, and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

Section 11.5 Directors and Officers Insurance.

The Association shall purchase and maintain insurance on behalf of any Person who is or was a member of the Board of Directors, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against the Person by virtue of the Person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify the Person against liability under provisions of this Article.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Fiscal Year.

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December every year. The Board has the right, from time to time, to change the fiscal year of the Association.

[Note: The provision revises Article XV, Section 1 of your current Bylaws to allow more flexibility.]

Section 12.2 Notices.

All notices to the Association or the Owners shall be delivered in accordance with Colorado law.

[Note: The provision has been added.]

Section 12.3 Conflicts.

In the case of any conflicts between the Declaration and these Bylaws or the Articles of Incorporation, the terms of the Declaration shall control. In the case of any conflicts between the Articles of Incorporation and these Bylaws, the terms of the Articles of Incorporation shall control.

[Note: The provision is similar to Article XII of your current Bylaws.]

[Note: Article VIII (Mortgages), X (Obligations of the Owners), and XII (Assessments) have been removed from the Bylaws as they are more appropriately contained in the Declaration and should not be duplicated in the Bylaws. Article Xiv (Corporate Seal) has been removed from the Bylaws as it is no longer required by Colorado law.]

CERTIFICATION

By signature below, the Secretary of the Board of Directors certifies these Amended and Restated Bylaws received the affirmative vote of Members holding at least a majority of the votes entitled to be cast in the Association who were present and voting, in person or by proxy, at a regular or special meeting of the Members at which a quorum was present.

[Note: Your current Bylaws allow the Board to amend the Bylaws without Owner approval; however, Colorado law requires Owners to approve amendments to the Bylaws which change the quorum requirement, the qualifications, powers and duties of the Board, or the terms of Directors. Therefore, this document will require the affirmative vote of Members holding at least a majority of the votes entitled to be cast in the Association who are present and voting, in person or by proxy, at a regular or special meeting of the Members at which a quorum is present, as set forth in the above certification.]

**UNIVERSITY PARK HOMEOWNER'S
ASSOCIATION, a Colorado nonprofit corporation**

By: _____
Secretary

Date: _____